



REPORT TO THE PLANNING COMMISSION

CITY COUNCIL CHAMBERS, 3300 CAPITOL AVENUE, FREMONT CA 94538

General Order of Business

1. Preliminary (Call to Order – 7:00 p.m.,
Salute to the Flag, Roll Call, Approval of
Minutes)
2. Consent Calendar
3. Oral Communications
4. Public Hearing Items
5. Matters of Interest
6. Adjournment



Addressing the Planning Commission

Any member of the public may speak on any item under discussion by the Planning Commission after “being recognized” by the Chairperson. To speak, walk to the rostrum directly in front of the Commission and, after the Chairperson recognizes you, state your name and address. Generally, after the Chairperson introduces an item, the order of presentation begins with comments by staff. The project applicant or their authorized representative may then comment. Next, interested members of the public may speak. Additional comments by the applicant or staff, as appropriate, may follow. At the close of testimony, the matter will return to the Planning Commission for discussion and action. Any item not introduced prior to 11:00 p.m. will automatically be “continued,” or held over, to the next regularly scheduled Planning Commission meeting.

Consent Calendar

Items on the Consent Calendar are scheduled public hearing items which are considered routine by the Planning Commission. The Consent items will be enacted by one motion and one vote and include the following:

- Items recommended for continuance to a later meeting.
- Items for which staff has received no indication of public concern and for which staff is recommending approval.
- Items which have been moved from the regular hearing agenda and placed on the Consent Calendar at the beginning of any particular meeting.

Items on the Consent Calendar may be removed by any member of the public or Planning Commission. If removed from the Consent Calendar, the item will be placed on the regular hearing agenda in its normal sequence on the agenda. When the Planning Commission approves a consent item, it approves the staff recommendation together with any conditions of approval included in the recommendation.

Please note that items on the regular hearing agenda may be placed on the Consent Calendar at the beginning of any particular meeting when requested by a member of the Planning Commission and with the approval of the Chairperson. If a Planning Commissioner requests that an item be moved from the regular hearing agenda and placed on the Consent Calendar, the Chairperson will ask if anyone in the audience or any other Commissioner wishes to speak to the item or have the item heard. If no one wishes to do so, the Chairperson may move the item to the Consent Calendar and it will be considered at that time. Accordingly, anyone wishing to speak to an item should be present at the beginning of the meeting.

Oral Communications

Any member of the public desiring to speak on a matter which is not scheduled on this agenda may do so under Oral Communications. As a matter of policy, the Planning Commission does not take immediate action on items presented under Oral Communications.

General Information

The Planning Commission usually meets on the 2nd, 3rd, and 4th Thursday of each month. [Exceptions: Only one meeting in August 27, November 12, and December 10.] Commission meetings are held in the City Council Chambers at 3300 Capitol Avenue.

Stenocaptioning and/or earphones for people who are hearing impaired are available from the Recording Clerk 15 minutes prior to the meeting. A driver's license will be held as a deposit. Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the Planning Department at (510) 494-4440. Planning Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. For more information on Planning Commission please visit our website at <http://www.fremont.gov/Construction/PlanningCommission/default.htm> or contact the Planning Department at (510) 494-4440.

The regular meetings of the Fremont Planning Commission are broadcast on Cable Television Channel 27.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the Historical Architectural Review Board less than 72 hours prior to the meeting will be available for public inspection at 39550 Liberty Street during normal business hours, at the time the records are distributed to the Planning Commission.

Copies of staff report are available at the Development Services Center at 39550 Liberty Street (between Stevenson Blvd. and Walnut Ave.) and at City Hall at 3300 Capitol Avenue the week of the meeting and are free of charge. Plans and other supporting documents may be viewed any day until noon the day of the Planning Commission meeting. Copies will be provided at cost when feasible. The Development Services Center is open 8 a.m. to 4 p.m., Mondays through Thursdays; and 8 a.m. to 12 p.m., Fridays.

Planning Commission final agendas, which include location maps, staff reports and proximity maps can also be viewed on the Internet at <http://www.fremont.gov/CityHall/PlanningMeetings/default.htm>.

The Planning Commission meetings are now also live over the Internet. Please note: Live webcasts are only available when the Planning Commission is in session. If the Planning Commission is not in session, the web browser will return a "busy" error.

To send an e-mail message to all of your Planning Commissioners send your message to:
planning_commission@fremont.gov

To leave a voice message for any of the Planning Commissioners, dial the numbers listed below:

David Bonaccorsi:	494-4895 *4998
Yogi Chugh:	494-4895 *4992
Richard King:	494-4895 *4995
Dirk Lorenz:	494-4895 *4997
Daniel Lydon:	494-4895 *4993
Dr. Rakesh Sharma:	494-4895 *4994

We appreciate your interest in the conduct of your City's business. Information about the City or the items discussed in this report may be referred to:

Planning Commission Secretary
City of Fremont Planning Division
39550 Liberty Street, P.O. Box 5006
Fremont, CA 94537-5006
Telephone: 510-494-4440

Planning Commissioners

Richard King, Chairperson
Dr. Rakesh Sharma, Vice Chairperson
David Bonaccorsi
Yogi Chugh
Dirk Lorenz
Daniel Lydon

City Staff

Jeff Schwob/Wayne Morris, Planning Commission Secretaries
Joan Borger, Assistant City Attorney
Scott Rennie, Senior Deputy City Attorney
Alice Malotte, Recording Clerk

**This Page Left
Blank Intentionally**



AGENDA
FREMONT PLANNING COMMISSION MEETING, JANUARY 22, 2009
COUNCIL CHAMBERS, CITY HALL, 7:00 P.M.

1. PRELIMINARY

- 1.1 CALL TO ORDER**
- 1.2 SALUTE TO THE FLAG**
- 1.3 ROLL CALL**
- 1.4 APPROVAL OF MINUTES** – Regular Meeting of December 11, 2008 and January 8, 2009.
- 1.5 DISCLOSURES**

2. CONSENT CALENDAR: NONE

NOTICE: ITEMS ON THE PUBLIC HEARING CALENDAR MAY BE MOVED TO THE CONSENT CALENDAR IF NO ONE IS PRESENT TO SPEAK ON THE ITEMS. ALL APPLICANTS AND INTERESTED PERSONS ARE ADVISED TO BE PRESENT AT THE START OF THE MEETING.

3. PUBLIC/ORAL COMMUNICATIONS

4. PUBLIC HEARING ITEMS

- Item 1. SUTRA ULTRALOUNGE - 6050 STEVENSON BOULEVARD - (PLN2009-00047)** - to consider a Planned District Minor Amendment to allow a multi-use entertainment complex (restaurant/bar/nightclub) with hours of operation until 2:00 a.m. to occupy a 10,200 square foot tenant space and construct 2,000 square feet of mezzanine and outdoor seating area for a total size of 12,660 square feet in Phase I of The Globe Planned District, P-2006-10. A Mitigated Negative Declaration has been prepared and circulated in accordance with the requirements of the California Environmental Quality Act.
Project Planner - Steve Kowalski, (510) 494-4532, skowalski@fremont.gov

Recommended Action:	To consider the application and either approve or deny based on the results of its analysis. If the Commission decides to approve, then staff recommends doing so based on findings and subject to conditions contained in Exhibit "C".
------------------------	---

- Item 2. URBAN HOUSING GROUP PROJECT - 3651 WALNUT AVENUE - (PLN2009-00009)** - to consider a Central Business District Concept Plan Amendment, Preliminary and Precise Planned District, Density Bonus, Preliminary Grading Plan, Vesting Tentative Tract Map 7986, and a Street Abandonment

Application for a portion of California Street for the development of a 4.1 acre site located in the Central Planning Area. The proposed project would allow for the development of 301 condominium units, an approximately 17,000 square foot Civic Park and 1,200 square feet of office/commercial space. A Mitigate Negative Declaration has been prepared and circulated for this project.
Project Planner - Wayne Morris, (510) 494-4729, wmorris@fremont.gov

Recommended Action: Recommend approval to City Council

5. MISCELLANEOUS ITEMS

Information from Commission and Staff:

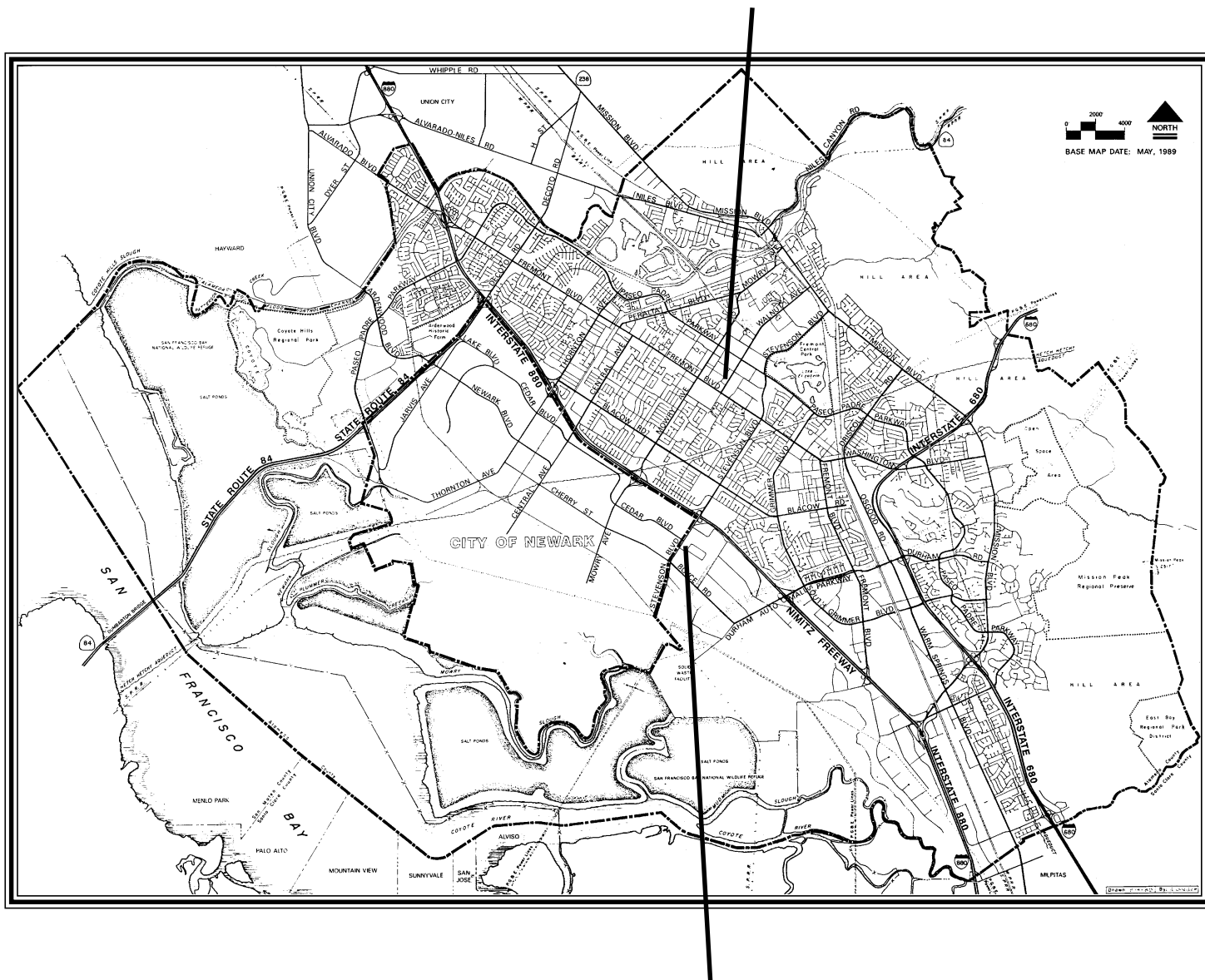
- Information from staff: Staff will report on matters of interest.
 - Report on actions of City Council Regular Meeting
- Information from Commission: Commission members may report on matters of interest.

6. ADJOURNMENT

Proximity Map

This map shows the general location of projects (by file number) which are scheduled for Planning Commission consideration.

2) Urban Housing Group Project PLN2009-00009



1) Sutra Ultralounge PLN2009-00047

**This Page Left
Blank Intentionally**



PLANNING COMMISSION STAFF REPORT JANUARY 22, 2009

Project:	SUTRA ULTRALOUNGE (PLN2009-00047)
Proposal:	To consider a Conditional Use Permit to allow an eating place with alcoholic beverages and a nightclub with hours of operation until 2:00 AM to occupy a 10,200 square foot tenant space with 2,000 square feet of mezzanine floor area (12,200± total square feet) in Phase I of The Globe Planned District, P-2006-10.
Recommendation:	That the Planning Commission consider the application and either approve or deny based on the results of its analysis. If the Commission decides to approve, then staff recommends doing so based on findings and subject to conditions contained in Exhibit "C".
Location:	6044 Stevenson Boulevard in the Industrial Planning Area APN: 531-0240-033-00 (See aerial photo on next page)
Floor Area:	±12,200 square feet
People:	Imperial Investment & Development (contact: John Wynn), property owner Status Entertainment & Restaurants, Inc. (contact: Jenny Wolfes), applicant Steve Kowalski, Staff Planner, (510) 494-4532; skowalski@fremont.gov
Environmental Review:	A mitigated negative declaration has been prepared and circulated for this project in accordance with the California Environmental Quality Act.
General Plan:	High Volume Retail
Zoning:	Planned District, P-2006-10

EXECUTIVE SUMMARY:

The applicant is proposing to combine four tenant spaces in the first phase of The Globe commercial development into one 12,200± square foot restaurant with sales of alcoholic beverages for on-site consumption that will convert into a bar/nightclub after dinner hours and remain open until 2:00 AM nightly and have an occupancy capacity of approximately 1,300 persons. As proposed, the restaurant portion of the business would occupy the front half of the space with the rear half generally remaining closed during lunch and dinner hours and opened only for private parties and when the nightclub opens for business in the evening. Under the Globe's Planned District (PD) Standards and Design Guidelines, one nightclub may be considered in the PD subject to the approval of a discretionary permit by the Planning Commission as a conditional use. The purpose of a conditional use permit is to allow a proper integration into the community of uses which may only be suitable in specific locations in a zoning district, or only if such uses are designed or laid out in a particular manner on the site or are subjected to specific conditions. The Planning Commission may either deny the application or approve it with any conditions it deems necessary. Staff has assembled a list of suggested conditions of approval should the Commission decide to approve the proposed use; these conditions are attached as Exhibit "C".

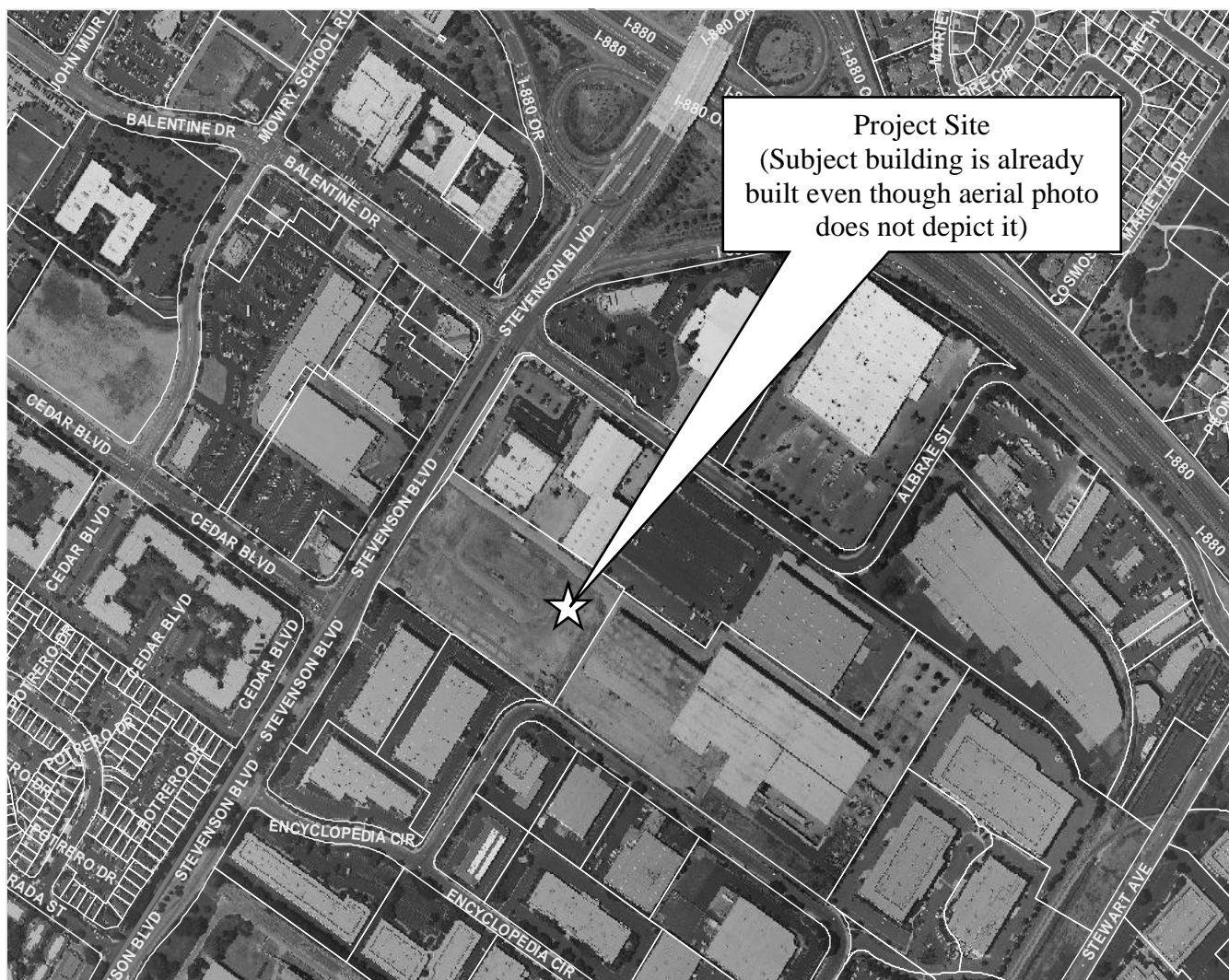


Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Shopping center uses (C-R zone)
- South: Industrial uses (G-I zone)
- East: The Globe (commercial development)
- West: City of Newark (Community Commercial [west/northwest], and High Density Residential [west/southwest])

BACKGROUND AND PREVIOUS RELATED ACTIONS:

On March 7, 2006, the City Council approved a General Plan Amendment to re-designate the subject site from General Industrial to High Volume Retail (PLN2005-00061). On February 17, 2007, the City Council approved the establishment of Planned District P-2006-10 (hereafter referred to as The Globe) for the property, a proposal that featured 557,900 square feet of commercial space, including 469,900 square feet of retail commercial floor area and an 88,000 square foot mini-storage facility. The PD contains land use regulations governing the specific uses allowed in The Globe. The regulations allow the consideration of one nightclub as a discretionary use within the Planned District. The subject building was developed as part of the first phase of The Globe. It was completed in late 2007 and is currently partially occupied.

The City of Fremont encourages the development of arts and culture and recognizes that entertainment establishments support such activities. Entertainment establishments that are not operated properly, however, can create an environment with the potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times, with attendant adverse public safety impacts on the surrounding businesses and residential communities. This has happened in Fremont. The City has experienced a number of serious problems related to patron conduct and lack of effective management at various nightclub/dance club venues throughout the City. Recent incidents have included physical fights involving multiple subjects, two homicides, two attempted homicides, multiple stabbings, shots fired, and a rape. Other problems include public drunkenness, vandalism of cars and businesses, public urination and other illegal, annoying and disruptive activities. Fremont police have had to spend an inordinate amount of time responding to these incidents to prevent and control major disturbances, which has affected other areas of the City by depleting the availability of police resources. In some instances, the response to problems at these establishments has required assistance from other public agencies. The City has not had effective measures in place in its municipal code to regulate dance club/night club type entertainment establishments.

To begin to address this lack of adequate regulation, on January 13, 2009 the City Council introduced a licensing ordinance for nightclubs that will be administrated by the police department. If adopted, the ordinance will regulate “places of entertainment”, which are defined as commercial establishments where patrons drink and dance to live performances. New establishments must apply for a renewable license and comply with operating requirements pertaining to, among other things, security, noise, patron management, hours of operation, employee training, and admission of minors. Applicants must also meet eligibility requirements to operate a place of entertainment.

Should the Commission approve the application, staff proposes that the Commission include a condition requiring the applicant to obtain a license under the new ordinance prior to opening for business. The Commission should note that the new ordinance does not replace the conditional use permit process for nightclubs or otherwise restrict the Commission’s discretion in granting, denying, or conditioning a conditional use permit for a nightclub. If there are any conflicting conditions in an approved use permit and license, the applicant will be required to comply with the more restrictive condition.

PROJECT DESCRIPTION:

The applicant is proposing to combine four adjacent tenant spaces into a single, 12,200± square foot restaurant that will be converted into a nightclub after dinner service has ended. The restaurant portion of the business will measure approximately 5,060 square feet and feature a full service sit-down restaurant in the front half of the tenant space. The restaurant will eventually serve lunch and dinner daily, but the applicant is uncertain as to what the specific daily business hours will be at this time because in her opinion it is currently not economically viable to remain open for business every day because there is a lack of critical mass in The Globe. As more tenant spaces become occupied and further development takes place throughout the PD, the applicant intends to be open for business seven days a week with standard lunch and dinner hours.

When the restaurant has closed for the evening, the nightclub will occupy the full 10,200 square feet of ground floor area as well as two mezzanines, for a total floor area of 12,200 square feet. Seating booths will be provided around the perimeter of the dining room with stackable tables provided on the main floor that can be moved when the restaurant switches over to a nightclub. Booths will also be provided around the perimeter of the nightclub portion and on both mezzanines. DJ booths, wall-mounted television screens, a dance floor, and two bars will be provided in the nightclub portion, and the kitchen will remain open late nights to provide food service to the nightclub clientele. Occasionally the venue will host live music, generally through promotions held by local radio stations. The applicant is proposing to have the establishment eventually remain open until 2:00 AM seven nights a week. Staff believes the venue should only be allowed to remain open this late Wednesday through Saturday. As such, staff has included a condition of approval limiting the nightclub hours to 2:00 AM Wednesday (with the actual closing occurring at 2:00 AM Thursday) through Saturday (with the actual closing occurring at 2:00 AM Sunday). On other nights when the nightclub is not open, staff feels that a closing time of 11:00 PM is appropriate.

The applicant will only allow patrons 21 years of age or older in the nightclub. The restaurant will be required to close at least 30 minutes prior to the opening of the nightclub each evening and all under-aged patrons will be required to leave at that time. Security personnel will then check each patron's identification inside the restaurant to ensure that all minors have vacated the premises age before the nightclub opens. Those that are 21 or over will be given a stamp identifying them as such and be allowed to remain.

The applicant is proposing to install an enclosed 456 square foot outdoor seating and smoking area on the end of the building for patrons of the restaurant and nightclub. The existing planters adjacent to the end of the building will be slightly reduced in size to provide the space needed for the enclosure, but an additional planter will be added on the same end of the building which will actually result in a net gain of 10 square feet of additional planter area (see Proposed Patio Plan in Exhibit "B"). The enclosure will be monitored by security personnel during nightclub hours to ensure that nobody from outside the establishment attempts to enter the establishment through it. No other exterior changes to the building are proposed; only interior tenant improvements needed to accommodate the proposed floor plan. To mitigate for noise impacts identified during the environmental review of the project, the applicant will construct a noise-buffering vestibule inside of the main entrance which will be used whenever music is being played inside the nightclub.

PROJECT ANALYSIS:

General Plan Conformance

The General Plan land use designation for the project site is High Volume Retail. This land use designation is intended to provide for retail and service uses along major thoroughfares with easy access to vehicular traffic such as big box retailers, auto-oriented uses and entertainment complexes. The following General Plan Land Use and Housing Goals and Policies are applicable to the proposed project:

- **Fundamental Land Use Goal F8** – *A diversity of residential, recreational, cultural, employment and shopping opportunities.*
- **Land Use Policy 2.33** – *Eating and Drinking Establishments are allowed in areas designated High Volume Retail.*

Analysis

The Globe is intended to be a lively, multi-use shopping and entertainment complex containing retail shops, restaurants and entertainment options. When The Globe PD was approved, the City Council included a provision providing that one nightclub may be considered in the PD subject to the approval of a discretionary permit by the Planning Commission. The proposed nightclub will provide an entertainment venue for those people who wish to go out for an evening of live music and dancing. In addition, the nightclub's location along Stevenson Boulevard just west of Interstate 880 in a largely commercial and industrial area whose businesses will typically be closed while the club is open will help minimize impacts on surrounding businesses. For these reasons, the proposed use is consistent with the goals and policies of the General Plan.

Zoning Analysis

Conditional Use Permit:

The project site is located with Planned District P-2006-10. The PD Standards and Design Guidelines for this Planned District provide that one nightclub may be considered within the PD subject to discretionary approval by the Planning Commission. In order to approve a conditional use permit the Commission must make the following findings:

- (a) The proposed use is consistent with the General Plan;
- (b) The site is suitable and adequate for the proposed use;
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses;

- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large; and
- (f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval).

Discussion:

- (a) General Plan Consistency: The proposal is consistent with the General Plan in that eating and drinking establishments which provide cultural and recreational activities such as live entertainment and dancing are permitted on land designated High Volume Retail in the Land Use Element of the General Plan.
- (b) Site suitability and adequacy: While the Globe PD provided for consideration of one nightclub as a discretionary use, it did not anticipate the combination of four of the tenant spaces (and additional patio space) to create such a large club. The building as it was originally constructed will not prevent noise from the club's sound system from emanating at levels that could exceed the City's noise standards at the nearest residential units located across Stevenson Boulevard in the City of Newark. Any approval must be conditioned on requiring noise mitigation measures that will enable the use to comply with these standards. The addition of the patio for an outdoor smoking area has been preliminarily reviewed by the Building Division and Fire Department for compliance with building safety and accessibility codes. Portions of the sidewalk where the enclosure will be located will be made narrower to accommodate the enclosure, but all required exit routes and accessible paths of travel will be maintained in accordance with building code requirements.
- (c) Impact on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services: The accessibility of the site and the abundance of adjacent parking on the property make it adequate for occupancy by the proposed use. Traffic generated by the proposed use will not adversely impact the road network of the surrounding area or overburden parking facilities in that the club will open its doors in the late evenings well after the afternoon rush hour has ended, and close to or after the time that most other adjacent business have closed for the evening. Again, the original approval did not contemplate combined spaces which would result in such a large club. The City's experience has been that nightclub uses can create impacts which strain the ability to deliver police services throughout the City. To ensure that the club's activities do not deplete police services throughout the rest of the City, the applicant should be required to provide licensed private security and implement various safety measures to the satisfaction of the Police Chief at all times while the club is open for business.
- (d) Economic Impact on nearby uses: There is one other nightclub in the vicinity, therefore there is no reason to believe the proposed project would negatively impact that business. In addition, according to the property owner, other businesses have indicated a desire to lease nearby tenant spaces within the Planned District if the nightclub is able to open in order to capture business from the nightclub's clientele.

- (e) Impact to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large: Noise from the club and club patrons leaving at night could negatively impact the nearby residential neighborhood. To ensure that noise from the club's sound system does not adversely impact nearby residents, the applicant will be required to construct a noise-buffering vestibule directly inside the main entrance and install a volume limiter on the sound system. Operational controls must be in effect so that patron behavior does not impact neighboring residents and property owners, or the community at large.
- (f) Compliance with applicable regulations: The project will comply with all applicable regulations of Article 27 of the Zoning Ordinance in that the applicant will be required to obtain approval from the Development Organization, including the Planning, Building and Landscape Architecture divisions, for the interior and exterior modifications being made to the property.

Design Analysis

Site Planning/Circulation:

The only change proposed to the existing site plan will be the addition of an enclosed outdoor seating/smoking area at the end of the building adjacent to the drive aisle. This enclosure will be used for outdoor dining during lunch and dinner hours, and converted to an outdoor smoking area during nightclub hours. The enclosure has been preliminarily reviewed by the Building Division and Fire Department for compliance with building safety and accessibility codes. Portions of the sidewalk where the enclosure will be located will be made narrower to accommodate the enclosure, but all required exit routes and accessible paths of travel will be maintained in accordance with building code requirements.

Parking:

The applicant is proposing to construct two mezzanines inside the tenant space for use by patrons of the nightclub. The mezzanines will add approximately 2,000 square feet of seating area to the space. Per Section 8-22003 of the Zoning Code, the parking requirement for bars/nightclubs is one space for each 80 square feet of floor area. Therefore, the addition of the mezzanines would result in the need for an additional 27 parking spaces. The entire site, including the large building which the proposed use intends to occupy and the smaller, freestanding building containing East-West Bank and Cyclo Café required 277 parking spaces based upon a shopping center ratio of 1 space/250 square feet. A total of 293 spaces have been provided on the site, or 16 more than the required amount.

When staff reviewed the parking requirements for The Globe PD it analyzed the parking needs for the entire development - not each parcel on a parcel-by-parcel basis - because it was assumed that some patrons visiting the PD would park their cars in one location and walk throughout the development to other locations. The PD approval allowed for a maximum of 115,000 square feet of total restaurant floor area, and the parking plan for the PD was designed to accommodate that amount of restaurant floor area at build-out. To date, some five restaurants totaling 32,559 square feet have been approved in the PD. Therefore, the proposed restaurant/nightclub would bring the total square feet to 44,759, still well under the 115,000 square foot limit of the original PD approval. The final parking plan for the entire PD actually featured a 33-space surplus; therefore, there is more than enough parking throughout the PD to accommodate the restaurant limit and the additional spaces needed for the nightclub's mezzanines. Furthermore, because the nightclub will generally open its doors after the majority of other tenants in the PD have closed for the evening, staff believes there is no need for additional parking to be provided.

Architecture:

The only change proposed to the existing building is the installation of a patio enclosure on the end of the building to allow for outdoor dining for restaurant patrons and smoking for nightclub patrons. This enclosure will be required to be designed to match the architectural style and color scheme of the building. The final design will be subject to review and approval by the Planning Director.

Landscaping:

There are three existing planters in the sidewalk between the end of the building and the parking lot drive aisle. In order to accommodate the proposed outdoor dining/smoking area, two of these planters will each be reduced by an area approximately 5' x 8', resulting in a total reduction of 80 square feet of planter area. To offset this reduction, the applicant will install a new planter measuring approximately 90 square feet in the same sidewalk a few feet away from the two planters being affected. The City's Landscape Architecture Division reviewed the proposed changes and found the new design acceptable.

Security Measures for Nightclub Operations:

Under the California Building Code, a nightclub of this size is allowed a maximum occupancy of approximately 1,300 people at any given time. At the present time, the Fremont Police Department has limited resources during late nights to respond in the event that a large disturbance such as a brawl. The need for police services at the site could limit service to the rest of the community. For this reason, the applicant will be required to employ a professional security firm to monitor the establishment at all times. The security firm will be required to monitor the premises in and around the nightclub and the parking lot, control queues, entrances and exits, check identifications, enforce clientele conduct codes and assist law enforcement in the event of an emergency. Security staff will be required to wear brightly-colored tops so that they are clearly identifiable, and "under-cover" security personnel dressed in plain clothes will also mingle with the clientele to closely monitor all of the patrons and identify potential problems. None of the security personnel will be armed with weapons of any kind.

Due to the remote location of the site and the fact that the Police Department has limited resources during late evenings, and because the maximum occupancy of the club allows for such a large number of patrons, the Police Chief has requested a ratio of one security officer for every 50 patrons.

As further security measures, video cameras will monitor the interior, main entrance, and parking areas immediately adjacent to the nightclub, and security staff will conduct regular parking lot sweeps during business hours and after the club has closed until all patrons have departed. In addition, all bartenders, servers and managers will be required to complete responsible beverage service training courses conducted by the Department of Alcoholic Beverage Control (ABC), and proof of completion of the course by each employee must be maintained on the premises at all times.

Applicable Fees:

The additional square footage being added to the tenant space will be subject to Citywide Development Impact Fees. This includes fees for fire protection, capital facilities, and traffic facilities. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance for the tenant improvements that must be made to the spaces the proposed use will be occupying.

Environmental Review:

An Initial Study and Draft Mitigated Negative Declaration have been prepared for this project. The Initial Study determined that the project could have potential adverse impacts on public services by overtaxing the City's police services in the event a serious incident occurred at the nightclub in the late evening or early morning hours, and that noise generated by the playback of music over the club's sound system could have a significant impact on the residential units located across Stevenson Boulevard in the City of Newark. Because the project may have significant environmental impacts, a Draft Mitigated Negative Declaration was prepared and circulated for public review for 20 days from December 30, 2008 through January 20, 2009 in accordance with the requirements of the California Environmental Quality Act (CEQA) (see Exhibit "A"). The applicant has agreed to implement mitigation measures that would reduce the impacts the project may have to a less-than-significant level. These mitigation measures have been included as conditions of approval on the project. As such, staff recommends the Commission recommend that Council adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as presented in Exhibit "A".

PUBLIC NOTICE AND COMMENT:

Public hearing notification is required for the entitlement being requested. A total of 258 notices were mailed to the owners and occupants of all property within 300 feet of the site, including residents of the Murieta condominium complex on the corner of Stevenson and Cedar Boulevard in the City of Newark. The notices were mailed out on Wednesday, January 7, 2009. A Public Hearing Notice was also published in The Tri-City Voice on this same date.

ENCLOSURES:

Exhibits:

Exhibit "A"	Mitigated Negative Declaration/Mitigation Monitoring Plan
Exhibit "B"	Proposed Development Plans
Exhibit "C"	Findings and Conditions of Approval

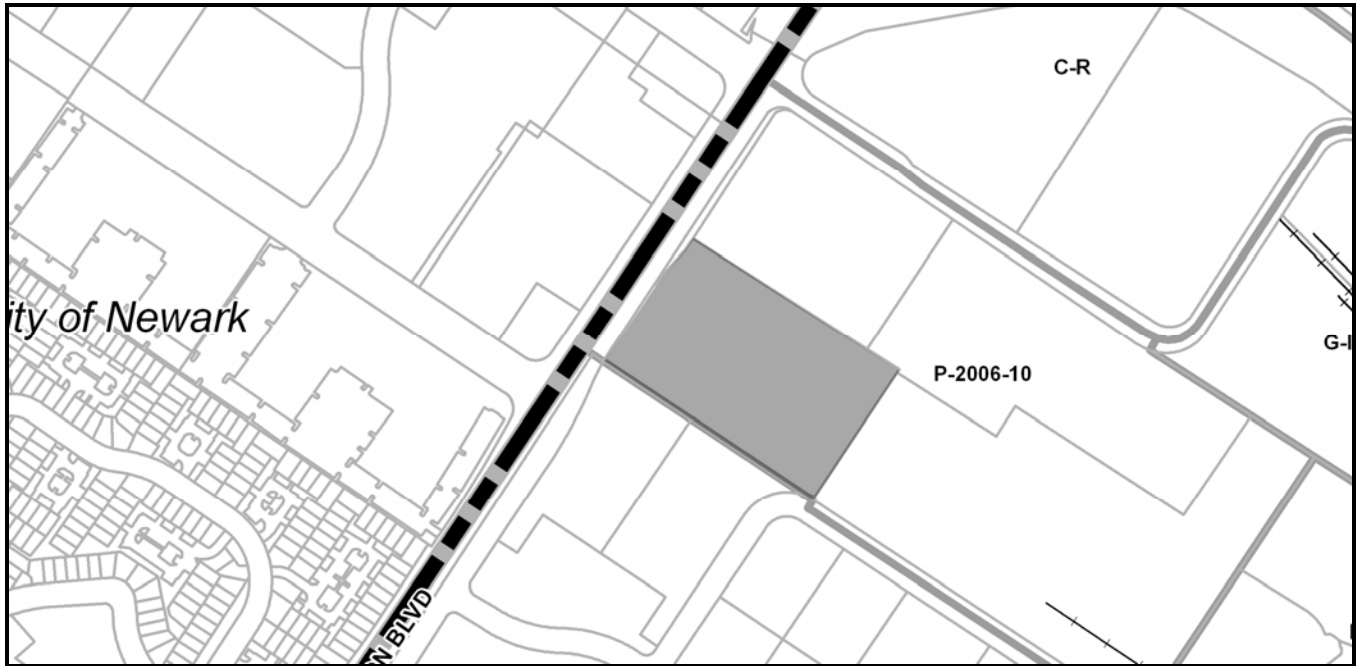
Informational Items:

1. Initial Study
2. Business Proposal and Security Plan submitted by applicant
3. Ordinance pertaining to regulation of places of entertainment introduced by City Council on January 6, 2009

RECOMMENDATION:

1. Hold public hearing;
2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as shown in Exhibit “A” and find that they have evaluated the potential for this project to cause any adverse effect, either individually or cumulatively, on wildlife resources, and find that these actions reflect the independent judgment of the City of Fremont;
3. Find that PLN2009-00047 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the Land Use Element of the General Plan, as enumerated within the staff report; and
4. Approve PLN2009-00047 as shown in Exhibit “B”, based on the findings and subject to the conditions contained in Exhibit “C”; or
5. If the Planning Commission opts to deny the proposed Conditional Use Permit application, then direct staff to prepare findings for denial based upon direction from the Planning Commission.

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan



Exhibit "C"
Findings and Conditions of Approval
PLN2009-00047 - Sutra Ultralounge Conditional Use Permit
6044 Stevenson Boulevard

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated January 22, 2009, incorporated hereby:

Conditional Use Permit:

- (a) The proposed use is consistent with the General Plan in that uses that offer cultural or recreational opportunities are may be allowed on land designated High Volume Retail in the Land Use Element of the General Plan, and the Planned District Guidelines and Regulations adopted for The Globe development specifically allow one nightclub within the PD subject to approval of a discretionary permit by the Planning Commission;
- (b) The site is suitable and adequate for the proposed use in that it features ample parking, convenient access and visibility for customers as well as emergency and law enforcement personnel, and is located far enough away from residential uses that, with the implementation of certain noise mitigation measures, noise from the nightclub will not have an adverse impact on residents living in the area;
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services in that the vast majority of traffic it will generate will occur late at night well after the afternoon rush hour and close to or after most nearby businesses have closed for the evening, and private security will be provided in accordance with the requirements of the Chief of Police to monitor the premises and maintain the safety of the patrons;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses in that there is only one other nightclub use in the area and that club caters to an entirely different clientele;
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large in that the applicant will be required to provide licensed private security at all times while the club is open for business to the satisfaction of the Police Department, and to ensure that noise from the club's sound system does not adversely impact nearby residents, the applicant will be required to construct a noise-buffering vestibule inside of the main entrance and install a volume limiter on the sound system which will limit the volume to maximum levels as recommended by the acoustical expert who prepared the noise study for the environmental review of the project; and

- (f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval) in that the applicant will be required to obtain approval from the Development Organization for all changes being made to the building and property.

CONDITIONS OF APPROVAL:

General Conditions

1. The approval of this conditional use permit shall allow the establishment and operation of a 12,200± square foot restaurant with alcoholic beverage service and nightclub as shown in Exhibit "B" (Site Plan and Floor Plan), and subject to compliance with all of the conditions of approval set forth herein.
2. Minor modifications to this conditional use permit may be made subject to review and approval by the Planning Director if such modifications are in keeping with the intent of the original approval. However, the Planning Director may refer any modification to the Planning Commission when the Director feels the request is of such a nature that it warrants consideration by the Commission.
3. A copy of these conditions of approval shall be kept on the premises and made available to any peace officer/employee of the City upon request.
4. If the Planning Director finds evidence that any of the following conditions of approval have not been fulfilled or that the use has resulted in a substantial adverse effect on public health, safety, and/or general welfare, he/she may refer the conditional use permit to the Planning Commission for review. If upon such review the Planning Commission finds the project has resulted in a substantial adverse effect on the public health, safety and/or general welfare, the Commission shall reserve the right to modify or revoke the approval of the use.
5. Signage is not a part of this review. The applicant shall apply for a sign permit. All signage shall conform to the Planned Sign Program adopted for Phase I of The Globe.

Conditions to be satisfied prior to issuance of a Certificate of Occupancy

6. Final plans for the project shall be submitted to the Development Organization for review and approval to ensure compliance with relevant codes, policies and other requirements of the Fremont Municipal Code, these conditions of approval, and any other associated approvals.
7. The applicant shall apply for and obtain a Place of Entertainment License from the City prior to the commencement of any nightclub-related activities at the premises.
8. The applicant/operator shall establish a phone number specifically for the purpose of receiving concerns and/or complaints from neighboring property owners, tenants and residents, and a staff position whose job is to respond to any calls received. The applicant/operator shall notify all adjacent property owners and tenants within 300 feet of the property of this phone number and staff position by means of a postcard or other form of mass mailing prior to the commencement of any nightclub-related activities at the premises.

9. The applicant shall meet all requirements of the currently-adopted editions of the California Building, Fire, and City of Fremont Municipal Codes in effect at the time of building permit.
10. The applicant shall install a monitored N.F.P.A. 13 fire sprinkler system and N.F.P.A. 72 voice notification fire alarm system complying with all local amendments. The fire alarm system shall be U.L. certified.
11. Any outdoor area heating systems shall be subject to review and approval by the Fire Department.
12. The outdoor dining/smoking enclosure shall be made of a durable material such as metal, and shall be designed to match the existing architectural style and color scheme of the building. Final design of the enclosure shall be subject to review and approval by the Planning Director.
13. The applicant shall construct an acoustically-lined sound lock vestibule inside the main entrance to the establishment. The walls and roof of the sound lock shall consist of a 5/8" thick layer of gypsum board on each outer side of 3-5/8" deep metal studs with R-13 insulation in the stud cavities. The interior surfaces of the walls and roof shall be internally lined with 2-inch thick sound-absorptive panels, such as Rebound Panels supplied by Wall Technology TM (www.walltechnology.com), or similar.
14. The parking lot shall be posted with signs stating "No loitering or consumption of alcoholic beverages." A plan showing the location, size and quantity of said signs shall be provided as part of the building permit application and be subject to review and approval by the Fremont Police Department prior to final occupancy.
15. The address of the business shall be clearly visible from the front and rear of the building. The address shall be illuminated during the hours of darkness.
16. The applicant shall have a key box (Knox brand) located outside of buildings/gates and provide keys to the Fire Department for access. Applications can be obtained at the Fire Department Administration Office located at 3300 Capitol Avenue, Fremont, CA, phone: (510) 494-4280.
17. The parking lot shall be properly illuminated during hours of darkness.
18. Security cameras shall be strategically placed to monitor and record areas that the Fremont Police Department deems important (parking lot, exterior, and interior of the building). Camera quality, lighting, and position must be at a high standard to ensure images are useful for law enforcement investigations and criminal prosecution. All images must be recorded and retained for at least 30 days. The exact location, specifications and quantity of said cameras shall be subject to approval by the Police Department prior to final occupancy.
19. The applicant shall comply with the provisions of the permits required from any state or regional agencies, including, but not limited to, the Union Sanitary District and the Alameda County Department of Environmental Health.

Ongoing operational conditions of approval to be complied with at all times (these conditions shall be in addition to the standard operating conditions of the Place of Entertainment License; the stricter condition shall prevail in the event of any discrepancy between these conditions and the standard operating conditions of the Place of Entertainment License).

20. The applicant/operator and all successive operators shall maintain and comply with the terms of the Places of Entertainment ordinance and license conditions at all times. Failure to comply with said terms may be grounds for revocation of this Conditional Use Permit.
21. Hours of operation for the restaurant shall be limited to 11:00 PM seven days a week.
22. Hours of operation for the nightclub shall be limited to Wednesday night through Saturday night until no later than 2:00 AM (with the venue closing at 2:00 AM on Thursday, Friday, Saturday and Sunday mornings). No patrons shall be admitted after 12:30 AM, and no alcohol sales shall occur after 1:30 AM. All music shall end by 1:45 AM.
23. No patrons under the age of 21 shall be allowed to enter the nightclub at any time. The restaurant shall close and all under-aged customers must vacate at least thirty minutes before the nightclub opens. All patrons entering the facility must provide valid picture identification to the club's security staff. The applicant may develop an alternative plan to ensure under-aged customers vacate the restaurant before the club opens; however, any such plan must be in writing and shall be approved by the Fremont Police Department.
24. Adult-oriented business or entertainment as defined under Section 8-2102 of the Fremont Municipal Code shall not be permitted at any time.
25. The number of persons located within the nightclub may not exceed the maximum occupancy allowed by the California Building Code (CBC). The maximum occupancy number shall be issued by the Building Official upon approval of building permit for the nightclub and shall be clearly posted at all times in accordance with the requirements of the CBC.
26. The facility shall have an automatic means of determining the actual occupant load within the building which shall be used whenever the nightclub is open for business. In the event this occupancy load monitor becomes non-operational, one security employee shall be assigned to monitor occupancy load until the monitor is repaired and made operational again.
27. In addition to posting maximum occupant load signs, the applicant and facility operator shall provide the current occupant load count to City of Fremont Police or Fire Departments upon request.
28. Private, licensed security guards shall be provided as follows: one (1) security guard for each 50 persons or fraction thereof, but no less than five (5) at any time. The security guards must be licensed through the State of California and must comply with Sections 5-5100-5-5108 of the Fremont Municipal Code. Security Guards shall not be armed and must wear clothing that is easily identified as a security guard (similar to bright yellow windbreaker-type jackets with the words "Security Officer" prominently displayed on the back and front of jacket). Security

personnel may not wear any type of uniform that is similar to the City of Fremont Police Department. Security guards must be present at least 30 minutes prior to the opening of the club and must remain on-site until the nightclub is closed and all patrons have left the parking lot.

29. Applicant or operator must notify the Fremont Police Department at least 72 hours in advance of any promotional events (expected increase of patrons beyond the norm) and meet and confer with the Department regarding the security plan for the event. Applicant or operator must adjust the number of security officers for the particular event as necessary to ensure a safe event.
30. The applicant shall not lease or rent the tenant space or a portion of the establishment to an outside promoter and shall not advertise or use a different name for the establishment for the entertainment portion of the nightclub.
31. A security supervisor (easily identified as such) who has the ability to effectively communicate (radio or cell phone) with other security officers must be on-site during all nightclub hours of operation. The Security Supervisor shall be the contact for Fremont Police Officers.
32. All patrons shall be searched prior to entering the nightclub (pat search and metal detector).
33. Dress code must be properly posted near the entrance of the club and shall be strictly enforced by security personnel.
34. Patrons shall not be allowed "in-and-out" privileges.
35. Security officers shall monitor queues that form outside the premises to ensure that patrons are behaving peacefully, not blocking sidewalks, roadways, required exits or entrances to adjacent businesses, or vandalizing the property in any way.
36. Security officers shall conduct restroom and smoking area sweeps at irregular intervals not to exceed 30 minutes to ensure that criminal activity is not taking place in these locations.
37. Security officers shall patrol the parking lot and will remain in the parking lot until all the patrons have left. The applicant must develop a policy on how security officers will address intoxicated patrons leaving the parking lot; the policy must be approved by the Fremont Police Department. Security officers will be responsible to patrol surrounding parking lots (including City of Newark) to deter club-associated criminal or nuisance activity.
38. Security personnel shall provide a written report/statement for criminal violations occurring on or near the premises and sign a Consolidated Arrest Form for any citizen's arrests it initiates. Security personnel shall participate, when requested, in court procedures which result from criminal activity occurring on or near the nightclub's premises.
39. Employees who are responsible for alcohol sales must complete necessary Department of Alcoholic Beverage Control (ABC) training and shall comply with all applicable ABC rules and regulations.

40. Alcoholic beverages (all types) may only be served in accordance with State of California Department of Alcoholic Beverage Control licensing requirements. No alcoholic beverages may be served or consumed outside of the establishment.
41. The applicant shall comply with all applicable state and local laws and regulations pertaining to smoking.
42. The applicant shall provide at least one (1) fully functioning water fountain inside the premises at all times.
43. The sound-buffering vestibule doors and all windows and other doors shall remain closed during nightclub business hours except to allow for clientele to enter and exit the facility and the outdoor smoking area.
44. The applicant shall install a noise limiter on the amplification system for both recorded music and live music to restrict the interior volume level to 105 dBA and 120 dBC.
45. All activities shall take place in the interior of the tenant space and no amplification of music or voice is allowed outside.
46. Special effects or events which diminish the effectiveness of fire protection systems, occupant notification systems, or infringe upon the means of egress are prohibited.
47. Pyrotechnic displays are prohibited at all times.
48. The property owner is responsible for litter control and graffiti control/abatement, and for the sweeping/washing of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris from patrons of the nightclub. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agents may be discharged to the storm drain.

END OF CONDITIONS

**This Page Left
Blank Intentionally**



PLANNING COMMISSION STAFF REPORT

January 22, 2009

- Project:** **URBAN HOUSING GROUP PROJECT- 3651 WALNUT AVENUE (PLN2009-00009)**
- Proposal:** To consider a Central Business District Concept Plan Amendment, Precise Planned District, Density Bonus, Vesting Tentative Tract Map 7986, Preliminary Grading Plan and a Street Abandonment Application for a portion of California Street for the development of a 4.1 acre site at 3651 Walnut Avenue. The proposed project consists of the development of 301 dwelling units, a 17,000 square foot Civic Park, and approximately 1,200 square feet of office/commercial space.
- Staff Recommendation:** Recommend approval to City Council
- Location:** 3651 Walnut Avenue, in the Central planning area.
APN 501-1130-048-01
(See map next page)
- Area:** 4.1 acres.
- People:** Dan Deibel, Urban Housing Group, Applicant
Kevin Newman, Newman Garrison Gilmour Architect
Paul Lettieri, The Guzzardo Partnership, Landscape Architect
Eddie Sieu, Ruggeri Jensen Azar, Civil Engineer
Wayne Morris, Staff Planner (510) 494-4729 wmorris@fremont.gov
- Environmental Review:** A Mitigated Negative Declaration has been prepared and circulated for this project.
- General Plan:** Existing: Central Business District
- Zoning:** Existing: P-2005-256, Precise Planned District
Proposed: P-2009-9, Precise Planned District

EXECUTIVE SUMMARY:

The Planning Commission is being asked to consider a Central Business District Concept Plan Amendment, a Precise Planned District, Density Bonus, Vesting Tentative Tract Map 7986, Preliminary Grading Plan and a Street Abandonment for a portion of California Street, for the development of 301 dwelling units, a 17,000 square foot Civic Park and approximately 1,200 square feet of office/commercial space at 3651 Walnut Avenue. Staff believes that the proposed project meets the City's goals and objectives in creating well-designed, in-fill multi-family housing developments and is a catalyst for the City's downtown area. Staff recommends that the Commission recommend the City Council approve the requested entitlements based on the findings and subject to conditions of approval in Exhibits "1", "2", and "3".

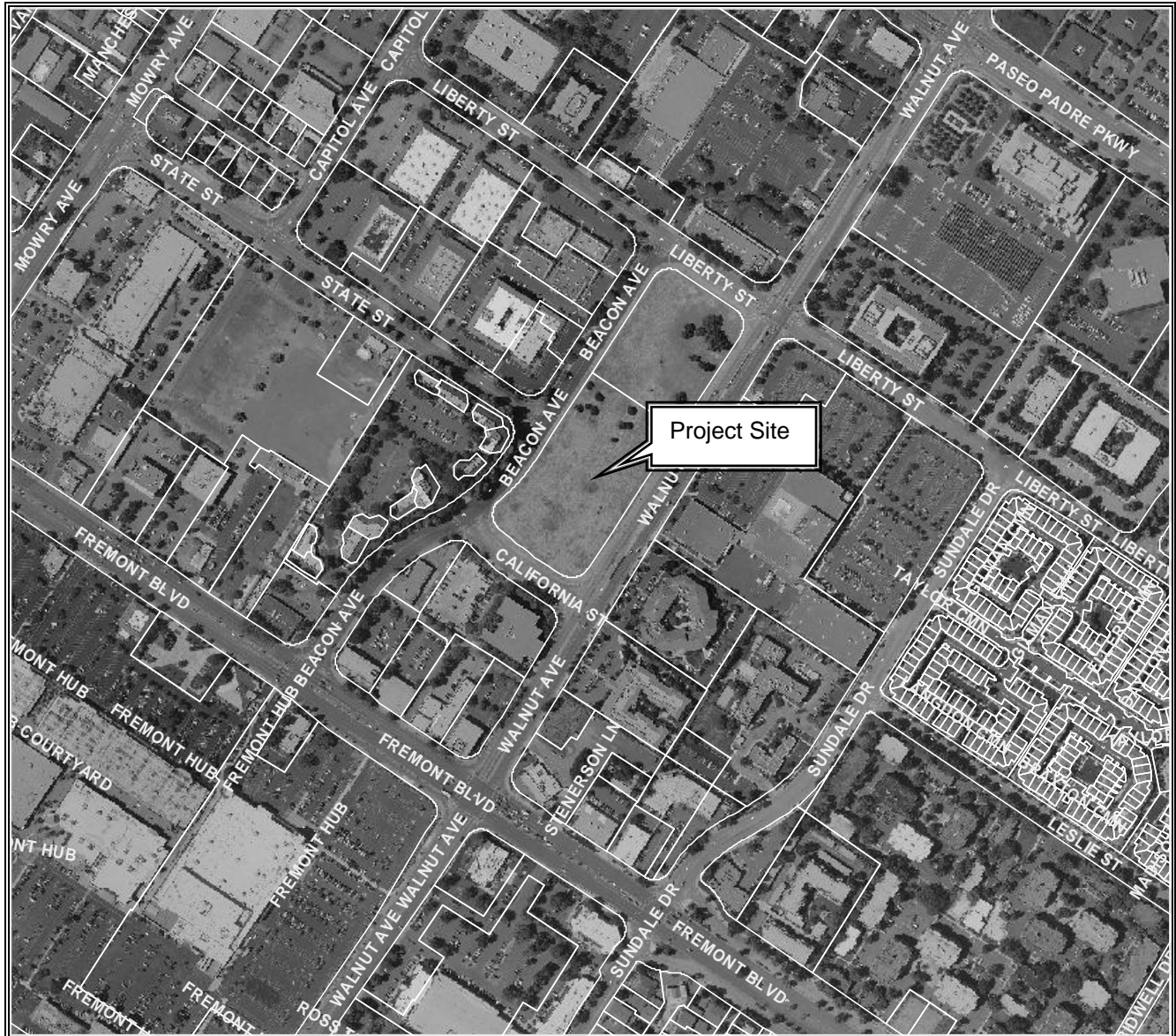


Figure 1: Aerial Map (2006) of Project Site and Surrounding Area.



[1 inch = 500 feet]

EXISTING LAND USE: Vacant

SURROUNDING LAND USES: North: Offices
 South: Residential – Assisted Living
 East: Vacant Parcel
 West: Offices

BACKGROUND AND PREVIOUS ACTIONS:

On November 6, 2001, the City Council adopted the Central Business District Concept Plan, which provides a defined vision, goals and outlines the direction for future development within the Central Business District.

To implement the vision in the plan over its 20-year time frame, the plan divided the CBD into several distinct subdistricts, each with a slightly different concept for the type and character of development. At the heart of the CBD is the “Focus Area” the portion of the CBD envisioned to become a more traditional downtown area, with retail uses and a “Main Street.” The Focus Area is bounded by Fremont Boulevard, Paseo Padre Parkway, Mowry Avenue and Walnut Avenue. Capitol Avenue is envisioned to become the heart of the Focus Area, ultimately extending to Fremont Boulevard, to provide visibility and access to the core area of the downtown. It is within the Focus Area that the project site is located.

2000 Project: In December 2000, a previous applicant received approval for the development of approximately 220,088 square feet (SF) of commercial office space and associated site improvements as it pertained to the subject site. The construction of the project was to be completed in two phases. Phase I of the project was to include two, four-story buildings fronting California Street and Beacon Avenue. Building One was to be a four story structure with a building footprint of approximately 13,500 SF for a total area of 52,510 SF. Building Two was also proposed to be a four story building with a total floor area of approximately 53,549 SF. Phase II of the project was to include a six-story building fronting Walnut Avenue with a total floor area of approximately 107,273 SF. A five level parking structure was also included as part of the Phase II improvements. After the entitlements were approved, the developer never proceeded any further with the project. The approval of this project was rescinded through the approval of the 2006 SummerHill Project.

2006 Project: In December 2006, the City Council on recommendation of the Planning Commission, approved a Precise Planned District, Vesting Tentative Tract Map 7836, a Preliminary Grading Plan and a Street Abandonment Application for a portion of California Street to allow SummerHill Homes to develop 227 condominium dwelling units, a 9,000 SF Civic Park and approximately 5,000 SF of commercial space at 3651 Walnut Avenue. The applicant was proposing to construct two primarily residential buildings (4/5 stories) that would have been bisected by the extension of State Street through the project site from Beacon Avenue to Walnut Avenue. A Civic Park was to be constructed in the middle of the State Street extension, which was envisioned to increase the activity and vibrancy of the area. A copy of the approved site plan (SummerHill Homes - Walnut Avenue Condominiums) is provided as an Informational enclosure. Staff understands that the project did not move forward to the construction phase because of the economic climate. The main differences between the approved 2006 project and the current proposal is that The Urban Housing Group Project would allow a net increase of 74 units and that the State Street extension from Beacon Avenue to Walnut Avenue will not be constructed. Staff is recommending, through the conditions of approval for this project (PLN2009-00009), that the SummerHill Project approval in 2006 (PLN2005-00256) be rescinded.

2008 Civic Park Recommendation: In December 2008, the Recreation Commission was provided with an update (Staff Report) as it related to The Urban Housing Group Project and, in particular, the proposed Civic Park component of the development. The Commission was advised that design and function of The Urban Housing Group’s proposed Civic Park was very similar to the SummerHill

proposal that they had seen in late November 2006. The applicant advised that they would develop the Civic Park as a “turn key project” for the City, in which they would receive an ‘In lieu’ credit for park development impact fees. Staff also noted that a funding mechanism was proposed to address the maintenance and capital replacement costs associated with the Civic Park. The Recreation Commission recommended that the City Council accept Lot A on Vesting Tentative Tract Map 7986 as a public park and that the proposed design of the Civic Park be approved.

PROJECT DESCRIPTION:

The applicant, Urban Housing Group, is requesting a Central Business District Concept Plan Amendment, Precise Planned District, Density Bonus, Vesting Tentative Tract Map 7986, Preliminary Grading Plan and a Street Abandonment for a portion of California Street, for the potential development of 301 dwelling units, a 17,000 SF Civic Park and approximately 1,200 SF of office/commercial space at 3651 Walnut Avenue. The proposed project development is summarized, as follows:

1. Dwelling Units: Two (2) primarily residential buildings are being proposed through this project. The proposed structures are four stories in height (approx. 50'). The internal garage structure is proposed to be a seven level garage (approx. 60'). Although the garage is higher than the residential structure due to the placement of the garage within the structure, the visual height difference will be minimal. The applicant is proposing nine different floor plans to accommodate the targeted market as follows:
 - Five - one bedroom floor plans ranging in size from 726 SF to 831 SF, (200 units).
 - Four - two bedroom floor plans ranging in size from 1,049 SF to 1,245 SF (101 units).
2. Parking Spaces.
 - Off-Street Parking: A total of 502 parking spaces will be provided within Building A. The parking spaces within Building A will support all of the proposed residential units. A 100 bike parking spaces are also proposed within the parking garage.
 - On-Street Parking: A total of 31 on-street parking spaces are being proposed within the public right-of-ways of Walnut Avenue, California Street and Beacon Avenue.
3. Open Space: All residential units on the ground floor and second floor have either a patio or balcony. Approximately 19,200 SF of Common Open Space is being provided within the project, with the most significant amount provided by Club House (pool/fitness facility - 7,600 SF).
4. Landscaping. A variety of trees, shrubs, flowers and ground cover are proposed. In addition, new street trees will be installed to further enhance the streetscape appearance on Walnut Avenue, California Street, and Beacon Avenue.
5. On-Site Private Amenities. Various courtyards, which serve as social zones in the common open space areas, a pool, spa, fitness facility and a Club House are some of the amenities proposed for the future residents of the development.
6. Circulation/Site Access. The parking garage is proposed to be located within Building A, which will be accessed from Beacon Avenue. Pedestrian access will be provided from Beacon Avenue to Walnut Avenue via the new Civic Park and by the adjacent sidewalk network. Residents will be able to access the parking garage from ground floor and from the pedestrian bridges that connect the two buildings at the third and fourth level over the Civic Park.
7. Civic Park. The applicant is proposing to develop and dedicate a 17,000 SF parcel (turn key park) to the City as a Civic Park designed to encourage pedestrian activity within the development as well

as the City as a whole. The park is proposed to include unique features such as a movie screen, artistic water features, benches, and lights.

8. Office/Commercial Space: The applicant proposes to develop approximately 1,200 SF of office/commercial space at the new intersection of State Street and Walnut Avenue.

PROJECT ANALYSIS:

General Plan Conformance: The General Plan land use designation for the project site is Central Business District. Land Use Policy LU 2.6 states the following: “Development of the CBD should be guided by a design and development plan which identifies a limited core area for very high intensity development, and other sub-areas as necessary or appropriate. Projects within one-half mile of the BART Station should be high intensity, or be phased and designed so as not to preclude the long-term achievement of a high intensity core area.” The design and development plan referred to in the above Land Use Policy is the Central Business District Concept Plan, which was adopted by the City Council in November 2001.

The CBD Concept Plan outlines specific goals which were used to formulate the overall plan. It is these goals that staff has reviewed and analyzed to ensure that the proposed project achieves the purpose and intent outlined in the CBD Concept Plan. The following is an analysis of some of the key goals and how project implements the CBD Concept Plan goals:

Concept Plan Goal 1: Create a recognizable and memorable Downtown which people can take pride in, and to which people want to go.

The Concept Plan indicates that one of the greatest disadvantages of the Central Business District is the lack of a definable downtown area. The Concept Plan states that one way to resolve this is by developing a “main street” to be constructed on Capitol Avenue, extending to Fremont Boulevard, which is to become the major retail center for the Central Business District. The Urban Housing Group proposes to develop a Civic Park which will provide a direct perpendicular route for pedestrians from the project site to Capitol Avenue. The office/commercial space and clubhouse facility are proposed to anchor the corners of Beacon Avenue and the entrance to the Civic Park. The ground floor units along the Civic Park have been designed to accommodate live/work units, which are envisioned to encourage more pedestrian activity/vibrancy than typical residential units. The proposed plan also provides for a Civic Park similar in design to the central commons in the Santana Row project in San Jose, although at a smaller scale and much less retail space. At the entrances to the Civic Park, a specimen tree and other architectural features are proposed to welcome pedestrians into the park as well as providing a memorable entry feature into the development and the CBD Focus Area beyond. Therefore, staff suggests that the above referenced goal will be implemented through the proposed project to allow high density residential housing, a Civic Park, and a limited amount of office/commercial space.

Concept Plan Goal 2: Create a Downtown comprised of a mix of land uses.

The project proposes a variety of land uses which will help distinguish the development within the CBD. While this project can help to initiate the goals of the CBD Concept Plan, due to its location on the edge of the Focus Area, it is not a suitable site to sustain a large amount of retail/commercial development.

The CBD Concept Plan encourages a mix of uses, which will in turn create a vibrant downtown area. The ground level retail space proposed at the corner of Beacon Avenue and the Civic Park would provide a valuable opportunity for a neighborhood-scale office/commercial space which could focus on the number of residence within the development. The Civic Park could host small gatherings for the public, such as outdoor art shows or neighborhood farmers market, and other activities that could be programmed within the central open area. Staff sees the Civic Park as an extension of the residential units, adjacent commercial space, and an area where residents of Fremont can sit and enjoy the surrounding environment.

The proposed 301 residential units will provide valuable consumers for both the office/commercial component proposed within the project as well as the existing/future retail developments throughout the CBD. Although the proposed project is primarily a residential project with a very limited amount of office/commercial space, staff believes that strategically located residential projects, such as the Urban Housing Group proposal, will help the City achieve the CBD vision to create an active and vibrant downtown.

Concept Plan Goal 3: Improve streetscape design in the CBD.

The CBD Concept Plan envisions improving the streetscape throughout the CBD, including narrowing some of the wider streets. The projects design concept is to modify the southern half of Beacon Avenue adjacent to the project site. Diagonal parking, which will serve the visitors and the office/commercial space, is proposed along Beacon Avenue, with a pedestrian friendly edge. The proposed design of Beacon Avenue will make it more pedestrian-oriented and encourage pedestrian circulation towards State Street and Capitol Avenue. Walnut Avenue is proposed to have parallel parking, a 10 foot wide sidewalk, and street trees. Finally, California Avenue is proposed to be narrowed from 102 feet to 72 feet and improved to encourage pedestrian movement along the street. All streets would be enhanced with tree grates and street trees to create a more urban environment.

With the implementation of the above noted site improvements, staff believes that the requested entitlements to develop a high density primarily residential project, a Civic Park and a limited amount of office/commercial space on the subject site would achieve Concept Plan Goal 3.

Concept Plan Goal 4: Improved amenities for pedestrians in the Downtown focus area.

The proposed Civic Park provides an opportunity to break-up the large block between California Street and Liberty Street. With the development of a Civic Park, pedestrians should be able to access State Street, Walnut Avenue and the future downtown retail areas more easily from the south side of the project site. The proposed Civic Park is envisioned to be an outdoor room where people can sit, relax, socialize and enjoy the surrounding area. These spaces are also areas where assembly activities, such as outdoor concert and activities, fairs and art festivals, could occur over specified periods of time. The proposed Civic Park and overall project would improve amenities for pedestrians in the area.

Concept Plan Goal 5: Encourage a network of strategically-placed public and private parking facilities.

On street parking and easily accessible parking structures are encouraged in the CBD. Parallel parking is proposed on Walnut Avenue and California Street, while Beacon Avenue is proposed to have diagonal parking. The majority of the parking is located on-site within an at-grade private parking structure located within Building A. The access point for the garage is located on Beacon Avenue. The retail customers would typically utilize the parking spaces provided on Beacon Avenue.

CBD Concept Plan Amendment: The proposed CBD Concept Plan Amendment, as outlined on Exhibit “C, C-1, C-2, C-3, & C-4,” is very general in nature. All of the proposed amendments relate to either revising text and/or diagrams within the CBD Concept Plan to reflect the applicants proposal to remove the State Street extension as a public road through the site from Beacon Avenue to Walnut Avenue.

Zoning Analysis

Density Bonus

The CBD Concept Plan requires the subject site to achieve a minimum density of 50 dwelling units per acre (du/ac) but allows up to 70 du/acre. Because 73 dwelling units per acre are proposed, the applicant is requesting a density bonus pursuant to Article 21.8 of the Fremont Municipal Code. The proposed project qualifies for a density bonus because it meets the criterion of providing at least 10 percent of the total units of a newly constructed condominium project or planned development as target units affordable to moderate income households. The table below summarizes the density bonus.

Urban Housing Density Bonus for Moderate Income Target Units			
Proposed # Target Units	Bonus for first 10% of Target Units	Additional Bonus for each 1% increase in Target Units	Total Maximum Density Bonus (not to exceed 40%)
15%	5%	1% X 5 = 5%	10%

Total Maximum Units Permitted with 10% Density Bonus: 70 du/ac + 10% density bonus = 77 du/ac

77 du/ac X 4.13 ac = **318 units** are the maximum number of units permitted with density bonus.

Based on the calculation above, the proposed 301 units at a density of 73 dwelling units per acre can be permitted on the site as it is less than the maximum 318 units permitted with a density bonus potential of up to 10 percent.

Parking: The Fremont Municipal Code (FMC) requires units with one bedroom to have one covered space per unit for residents, plus 0.5 uncovered spaces per unit designated for guest parking. The Code also requires units with two or more bedrooms to have one covered space per unit for residents, plus 0.5 uncovered spaces per unit for residents, and 0.5 uncovered spaces per unit designated for guest parking. Urban Housing Group is proposing 301 units (291 residential units and 10 Live/Work units). The 10 Live/Work units fronting the Civic Park would require an additional 1 uncovered parking space for guest parking per unit. The FMC also requires office/commercial uses to provide 1 parking space per 300 SF of floor area.

Residential Parking: The required parking would be 352 spaces for the residential units plus an additional 151 spaces for guests. As noted above, up to 10 additional spaces would be required for the live/work units. Thus the total required equals 513 spaces. The developer is providing 502 auto parking spaces and 100 bicycle spaces. The Zoning Ordinance allows for a credit of one auto space per eight bicycle spaces. This yields a total of 514 spaces, thus the residential portion of the project meets the parking spaces requirement as prescribed by the FMC. The project will provide standard and compact parking spaces, which are all within the required standards outlined in the FMC. As noted above, Urban Housing will provide a total of 100 bike parking spaces within the project, which is well in excess of what the City typically requires.

Retail Parking: The applicant is not providing any on-site parking spaces for the 1,200 SF of office/commercial space. However, a total of 31 on-street parking spaces (Walnut Avenue, California Street and Beacon Avenue) are being proposed with the project, which will more than sufficient to meet the needs of the future office/commercial tenants. It should also be noted that the CBD Concept Plan speaks to various parking reductions as a way to create the urban environment envisioned for the CBD. One way to achieve this goal is by using sharing parking. This is possible when the peak parking demand for one use is in the evening while another peak time is during the day time. Thus, staff also recommends a Finding for elimination of the parking requirement for the office/commercial space, due to the provisions of additional on-street parking and proximity to BART.

Inclusionary Housing: The applicant is required to meet the City's Inclusionary Zoning requirement through the provision of 15% of the units being allotted as Below Market Rate (BMR) units. The project will need to provide 45 BMR units. The applicant has committed to providing the required 45 units and is required to work with the City's Housing staff to identify the BMR units within the project. The applicant proposes to exceed the level of affordability within the project from 15% at 110% of Area Median Income (AMI), which provides for moderate income households, to 10% of the units set aside for moderate income households and 5% set aside 60% AMI which provides for low income households. The BMR Master Developer Agreement will include the following provision: "If the units are initially rented, then 15% of the units shall be set-aside at the inclusionary rates for moderate income levels (10% of total units) and low-income units (5% of total units). Units initially rented shall be restricted at affordable rates for the period rented. At the time the project converts to for-sale owner occupied units, the inclusionary units (10% moderate and 5% low income) shall be restricted for a minimum of 30 years. (Condition A-21)

Building Architecture:

The project proposes a mix of two complimentary architectural styles combined together for both buildings, so that each building's style elements appear to have been built over time. The design intent of the building architecture is to enhance the pedestrian experience along the street edges and to connect to the Civic Park centrally located within the development.

Building A has a combination of traditional and contemporary architectural styles with the corners of the building accentuated with strong contemporary elements. The building is organized around a parking garage and two passive, lifestyle garden courtyards with landscaped paseos that are publicly linked to California Street, Beacon Avenue, and Walnut Avenue. The two styles are differentiated by compatible earth tone color schemes, each complemented by a different roof massing treatment, expressed with flat roofs for the contemporary and pitched roofs for the traditional. The raised ceiling heights at the loft

units provide varying heights at certain contemporary elements throughout the project to articulate the building massing. In addition, the recessed windows and balconies are designed to emphasize the building forms consistent with the architectural style. The building materials consist of stucco, asphalt roof shingles, decorative metal railing, brick, and fabric and metal awnings, along with metal accents. The office/commercial space and live/work units along Civic Park will have storefront windows with a masonry base to enhance and reflect the commercial elements of the community. The recessed openings and articulated building massing further enhances the residential scale of the building along with the awnings, railings and lighting.

Building B is also a mix of contemporary and traditional architecture with more of an emphasis on a subdued traditional residential design. The building is designed around a third passive garden courtyard with pedestrian access to Walnut Avenue. The building materials consist of stucco, asphalt roof shingles, decorative metal railing, and fabric and metal awnings, along with metal accents. The clubhouse, pool facilities and tower will have brick, metal accents, awnings and standing seam metal roofs. The tower at Building B will anchor the development and link the clubhouse amenities to the bridge that connects the buildings on two levels. This contemporary feature element is a clear spanning, transparent connection over Civic Park that consists of metal with contemporary metal railings. The traditional railing combined with accent lighting at the recessed openings reinforce the residential scale of this building's urban edge. The color scheme also has a compatible earth tone palate with color accents at the public facilities and bridge.

Exhibit "E" (Project Development Plans) includes the elevations of the proposed buildings which provide a good perspective the buildings.

Green Building Practices:

The applicant is proposing to implement various green building features throughout the development, including using low-E, double-insulated tinted glass to minimize heat/cold transfer, low-emitting adhesive paints and finishes, sensor-controlled lighting, and water-efficient landscaping and plumbing fixtures. Bicycle racks will also be provided in the parking garage and within the civic park. In order to encourage implementation of other green building practices, a condition has been included requiring the developer to attempt to integrate Build-it-Green components into the final design to the maximum extend practical.

Open Space/Landscaping: The project proposes to develop approximately 19,200 SF of common open space for use and enjoyment by the future residents of development. This 19,200 SF is a combination of the following: Courtyard 1 – 3,568 SF, Courtyard 2 – 3,568 SF, Courtyards 3 – 4,275, the Club House and Fitness Facility – 7,695 SF. The Courtyard areas will be more passive in nature and offers a place for residents to sit, relax and enjoy the surroundings. The Club House and Fitness Facility will included such facilities as a swimming pool, spa, weight room, and lounge chairs. The Club House could be used for meetings and/or booked by resident of the development for a small function or meeting. Pedestrian access to the Club House area will primarily be from within the development, however, access from Beacon Avenue is also proposed through a secure card activated gate. Similar to the R-3 provisions, the Design Team has provided a private open space area for each residential unit as follows: balcony conditions 60 SF/ 6' min. dimension (2nd floor and above) and patio condition 100 SF / 10' min. dimension (ground floor units), however, it should be noted that some ground floor units do not achieve

the 100 SF provision, although staff feel that due to the location of these units to either the public sidewalk or Civic Park that it still meets the intent of providing an open space environment.

Civic Park: The Urban Housing Group is proposing to develop and dedicate a 17,000 SF parcel (Exhibit “E” Sheet C-1 Lot A) to the City as a public Civic Park designed to encourage pedestrian activity adjacent the development as well as providing a pedestrian connection towards the center of the CBD Focus Area. The concept design for this Civic Park was reviewed and approved by the Recreation Commission at their meeting on December 3, 2008. The concept design is for a pedestrian friendly space that is passive in nature where people can sit, relax, and enjoy the surroundings. The park is proposed to include a movie screen, artistic water features, benches, and other high quality landscaping and site feature.

Parking Structure: The project includes a parking garage within Building A which is proposed to be accessed off of the Beacon Avenue driveway. The parking structure and stalls within are constrained by the size, shape, and structural design of the building. Because of these constraints, the parking does not meet FMC section 8-22009(g)(2), which requires a minimum ten-foot inside wheel radius at changes in drive aisle direction, for minor drive aisles. The applicant has requested a deviation from the strict application of these standards for this development. The deviation is supported by staff and a similar deviation was approved as part of the Palo Alto Medical Building underground garage structure.

The requirement to provide minimum ten-foot inside wheel radii provides areas at drive aisle intersections for vehicles to negotiate right-hand turns with relative ease, without having to impede the travel of oncoming vehicles at the intersection. The applicants proposal will require vehicles to travel more slowly around corners and may lead, at times, to situations where vehicles may have to back-up to let other vehicles through a turn. Typically, drivers will expect a more constrained layout in a parking garage and adjust their driving accordingly. Additionally, the majority of the parking is for residents, who will learn to safely negotiate the parking garage.

Street Vacation:

The proposed project and subdivision boundary extends approximately thirty feet into California Street. The applicant is requesting that the City abandon this portion of California Street to facilitate their project. On January 9, 2007, City Council conditionally vacated this same portion of California Street as part of the previous SummerHill Project (PLN2005-00256). In order to use the thirty-foot wide portion of California Street (12,300 square feet total area), the applicant is required to relocate existing street and utility improvements (see Street Right-of-way Dedication and Improvements) pursuant to Government Code 65402.

The right-of-way for California Street was acquired by the City in 1964, as part of Local Improvement District 6. Because the City acquired fee title to the land, the City can sell or exchange the property on such terms and conditions as it determines appropriate, after the land use as a street has been vacated in accordance with the Streets and Highways Code. In this case, staff intends to recommend that City Council approve the vacation and convey the property to the developer in consideration of the developer's ; granting the Civic Park (Lot A) to the City as a public park; relocating existing street and utility improvements within the area being vacated, and constructing new public street and utility improvements in California Street, Beacon Avenue and Walnut Avenue.

General Plan Consistency: Section 8313 of the Streets and Highways Code states that "...if the proposed vacation of a street and/or public service easement is within an area for which a general plan is adopted, the Planning Commission shall consider the General Plan prior to vacating the street." In addition Government Code section 65402 requires that the proposed street vacation and conveyance of property to the developer be submitted to the Planning Commission for a determination and report on the conformity of those actions with the adopted General Plan. The proposed vacation of the street is in conformance with the General Plan Fundamental Goal: 10 "Public services responsibly managed and equitably distributed throughout the city." Staff recommends the general vacation because the applicant will provide ongoing park maintenance while the project is a rental project and when the units are sold will provide a cash contribution for the maintenance and capital replacement costs for the park. It should also be noted that an emergency vehicle access is being designed into the proposed Civic Park. The applicant is also conveying approximately 1,000 square feet of land along Beacon Avenue in order to extend the right-of-way improvements to meet the CBD Concept Plan.

Street Right-of-way Dedication and Improvements:

The site is bound on three sides by the existing public streets: Beacon Avenue, California Street, and Walnut Avenue. The CBD Concept Plan Goals include "...to improve streetscape design in the CBD," which includes improving the public streets "to better support vehicular, pedestrian, bicycle, and transit circulation. The following outlines the street right-of-way dedication and improvement requirements of this project.

- Beacon Avenue is currently a four-lane commercial service street between Fremont Boulevard and Liberty Street. The CBD Concept Plan suggests that Beacon be reconfigured as a pedestrian-oriented street with a narrower vehicle travel way, on-street parking, and wider sidewalks. The project implements the Concept Plan by reducing vehicle lanes to two, one lane in each direction, incorporating on-street diagonal parking, and installing a minimum ten-foot wide sidewalk.
- In order to facilitate the reconfiguration and maintain the minimum ten-foot wide sidewalk in the public right-of-way, the developer will dedicate two feet along the project frontage, increasing the right-of-way width from eighty-six feet to eighty-eight feet. Required street improvements include, but are not limited to: removing the existing curb, gutter, sidewalk, and some pavement; installing new curb, gutter, sidewalk, curb ramps, street trees, and on-street diagonal parking; and modifying existing utilities to conform to the new streetscape. The developer will also modify the existing striping and signing on Beacon, from Liberty Street to west of California Street.
- California Street is a four hundred foot long commercial service street between Beacon Avenue and Walnut Avenue. California Street is a five-lane street with a sixty-six foot pavement width and is designated as a reconfigured pedestrian-oriented street in the Concept Plan. The project intends to reduce the street right-of-way and pavement width to accommodate the project design and to accommodate the State Street extension. The street will be narrowed to one lane with on-street parallel parking and a minimum ten-foot wide sidewalk along the project frontage. Two travel lanes (one right turn lane and one combination through/left turn lane) and the existing curb, gutter, and sidewalk are maintained on the opposite side of the street.
- Subject to approval of the Street Abandonment, the California Street right-of-way will be narrowed by thirty feet to a new right-of-way width of seventy-two feet. The pavement width will be

narrowed from sixty-six feet to forty-three feet (including on-street parking). Required street improvements include, but are not limited to: removing the existing water, sewer, and storm drain mains and installing new mains; removing curb, gutter, sidewalk, and pavement; installing new curb, gutter, sidewalk, curb ramps, and street trees. The developer will also modify the existing striping and signing on California Street.

- Walnut Avenue is a four lane divided thoroughfare with an existing right-of-way width of one hundred four feet (104'), including an eighteen foot wide median. The right-of-way widens to one hundred twelve feet (112') before the California Street intersection for the existing right-turn taper. The CBD Concept Plan suggests that Walnut Avenue could become a parkway collector street by incorporating on-street parking and a bicycle lane, while maintaining a landscaped median. The project implements the Concept Plan by narrowing the existing median by three feet, installing new ten-foot wide sidewalk, and adding on-street parallel parking, while maintaining the existing bicycle lane.
- For Walnut Avenue required street improvements include, but are not limited to: narrowing the existing median by three feet, which includes removing the existing curb and installing new curb and pavement; removing the existing curb, gutter, and sidewalk; installing new curb, gutter, curb ramps, and street trees; and modifying existing utilities to conform to the new streetscape. The developer will also modify the existing left-turn pocket and median on Walnut Avenue, south of the California Street intersection to the new right-of-way and pavement width on California Street.

Intersections: To implement the project plan, including revising the streets to conform to the Concept Plan, the developer will revise the public street intersections surrounding the project site. The following outlines the intersection requirements for this project.

- Beacon/California: Narrowing California Street, reducing Beacon Avenue from four lanes to two lanes, and adding on-street parking, each contribute to the need to revise the Beacon/California intersection. The developer will revise the striping, including installing a new cross walk and curb ramp along the project frontage.
- California/Walnut: The existing right-turn taper from Walnut Avenue to California Street will be removed, to create a more pedestrian friendly crosswalk and to slow vehicles turning right. New crosswalk striping and a new curb ramp will be installed on the project frontage. The existing left-turn median "nose," from Walnut onto California, will be shortened and the pavement markings in the driveway of the assisted-living facility across Walnut Avenue will be revised, due to the narrowing of California Street.
- Beacon/State: Along with new striping and signing along most of Beacon Avenue, new crosswalks will be installed at State Street. The intersection design will accommodate a traffic signal, should one be warranted in the future.
- Liberty/Beacon: Reducing Beacon Avenue from four lanes to two lanes requires modifications of the striping, starting at Liberty Street. In addition to the striping, the developer will repaint the crosswalks.

Project Specific Standard Details: The CBD Concept Plan suggests enhanced streetscape improvements, including pavement design, street lights, street furniture, and materials that will enhance the pedestrian-oriented goals of the plan. The project includes accent pavers, vehicular unit pavers, benches, bollard lights, trash receptacles, bike racks, granite spheres, etc. The City's street maintenance program is not setup to maintain such non-standard improvements within the public right-of-way. Therefore, the property owners association shall agree to provide maintenance, cleaning, and general upkeep of the project street frontages. A similar maintenance agreement was required of The Benton project on Civic Center Drive.

In addition to the required maintenance agreement, the developer shall provide the City and the future property owners association, plans, details, and specifications for the street improvements that do not conform to current City standard details. The required street right-of-way dedications and improvements shall be included as part of the subdivision improvement plans.

Grading & Drainage:

The project site is approximately sixty percent (60%) of the 6.6-acre vacant block bounded by Beacon Avenue, California Street, Liberty Street, and Walnut Avenue. The site is flat, with an average ground elevation between 52 and 53 feet. The project will construct two multi-story condominium buildings, one of which includes a multi-story parking garage. Grading for the project consists primarily of the foundation excavation necessary for the buildings.

Storm Drainage: The project site is upstream from drainage facilities designated by FEMA as special flood hazard areas (Line D, Zone 5). The project storm drain system shall be designed such that there is no increased flooding hazard downstream of the project site. On-site storm water detention is proposed to prevent increased runoff from the project site. The design of Building A includes two concrete vaults under the first floor of the parking garage. The vaults will store storm water runoff and slowly discharge the detained water. The project storm drain design and hydrologic/hydraulic calculations are subject to review and approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

Urban Runoff Clean Water Program:

The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in storm water runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The project intends to meet the quantitative storm water treatment requirements by installing storm water treatment vaults in the streets and constructing biofiltration planters within and alongside the residential buildings. The biofiltration planters are designed to store a certain volume of runoff, infiltrate the stored runoff into the ground, and facilitate biological processes to remove pollutants. The proposed vaults will contain filter cartridges designed to remove anticipated pollutants from storm runoff. Due to the special maintenance requirements of the storm water treatment vaults, staff has included a condition of approval requiring the developer and design team to work with City staff on alternate treatment devices, which have less ownerous maintenance requirements. The storm water treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to final map approval.

As required by the Alameda Countywide NPDES Municipal Storm Water Permit, the property owners shall enter into a maintenance agreement for the long-term operation and maintenance of storm water treatment measures. The agreement will require the ongoing maintenance of the facilities, including periodic replacement of media filter cartridges in the five storm water treatment vaults. The property owners shall also integrate a sidewalk and pavement sweeping program to help prevent debris and other pollutants from entering storm drains.

Utility Agencies and Districts:

The project application was referred to the local utility agencies, districts, and companies. Review comments were provided by the Alameda County Water District (ACWD) and the Alameda County Public Works Agency (ACPWA) acting as the Alameda County Flood Control and Water Conservation District. Both agencies had recommendations regarding the project. Recommendations are as follows:

Alameda County Water District: ACWD will require the water system be designed according to ACWD standards. ACWD also will require redundant master meters to serve this project, in order to minimize service disruptions during repair or maintenance of the public water mains or service lines. Finally, ACWD recommended that the City require sub-metering of all units served by the master meter. Sub-metering provides the unit owner/occupant and the property owners association the ability to see how much water an individual unit is using. Sub-metering may encourage water conservation and will provide a mechanism for the property owners association to bill units based upon actual water consumption. Staff has included a condition of approval requiring sub-metering off all units.

Alameda County Public Works Agency: ACPWA provided comments which pertained to: preventing storm water pollution; establishing the hydraulic criteria for the storm drain system, and preventing increased runoff from the project site, which may require on-site or off-site storm water detention or storm drain upgrades. Conditions of approval have been included to address the ACPWA comments.

Applicable Fees: This project will be subject to Citywide Development Impact fees. These fees include fees for fire protection, park facilities, parkland in lieu, capital facilities and traffic impact. As part of the Precise Planned District rezoning P-2009-9 the Owner has agreed to contribute \$1.5 million dollars to the City when the City takes over maintenance of the Civic Park. The amount to be contributed will increase at the rate of the Consumer Price Index (CPI) in the San Francisco-Oakland-San Jose area starting five years after the acceptance of the Civic Park by the City. The contribution will be used for a Maintenance and Capital Funding Source for the maintenance and improvements of Civic Parks within the Focus Area of the CBD due to the relatively high cost of maintaining these spaces. (Condition A24 & A-25).

Environmental Determination:

An Initial Study, Draft Negative Declaration, and Mitigation Monitoring Plan have been prepared for this project. The environmental analysis identified concerns regarding potential impacts to air quality, biological resources, and noise. The Draft Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures have been included as conditions of approval for this project. A more detailed description of the potential impacts is provided within the Initial Study (Informational 1) for the project, which is included as an enclosure. Because the project could have significant environmental impacts, a Draft Mitigated Negative Declaration was prepared and circulated for public review for 20 days from December 20,

2008 through January 19, 2009 in accordance with the requirements of the Californian Environmental Quality Act (CEQA) (Exhibit "A"). The applicant has agreed to implement mitigation measures that would reduce the impacts the project may have to a less-than-significant level. These mitigation measures have been included as conditions of approval for the project. As such, staff recommends the Commission recommend that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as presented in Exhibit "A".

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 202 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on January 9, 2009. A Public Hearing Notice was published in *the Tri-City Voice* on January 7, 2009.

Exhibits:

Exhibit "A"	Mitigated Negative Declaration & Mitigation Monitoring Plan
Exhibit "B"	Legal and Plat for General Vacation of a portion of California St.
Exhibit "C"	Central Business District Concept Plan Amendment
Exhibit "D"	Rezoning Exhibit
Exhibit "E"	Project Development Plans/Vesting Tentative Tract Map 7986 and Preliminary Grading Plan

Proposed Project Condition Exhibits:

Exhibit 1 Findings and Conditions of Approval for Precise Planned District P-2009-9
Exhibit 2 Findings and Conditions of Approval for Vesting Tentative Tract Map 7986
Exhibit 3 Findings and Conditions of Approval for Preliminary Grading Plan

Informational:

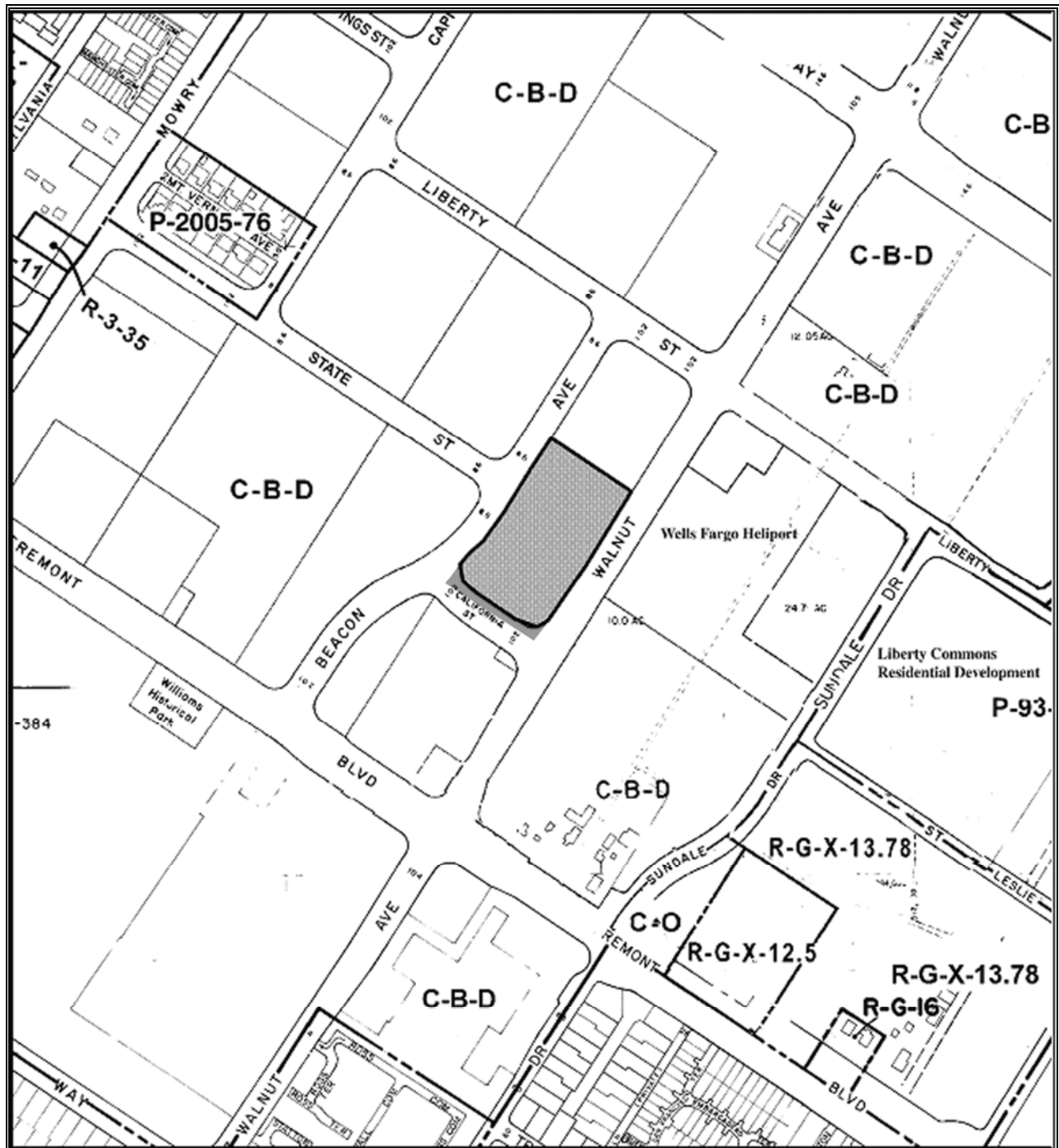
Informational 1	Initial Study – Environmental Document
Informational 2	Color Board
Informational 3	SummerHill Homes 2006 - Approved Site Plan

Recommended Actions:

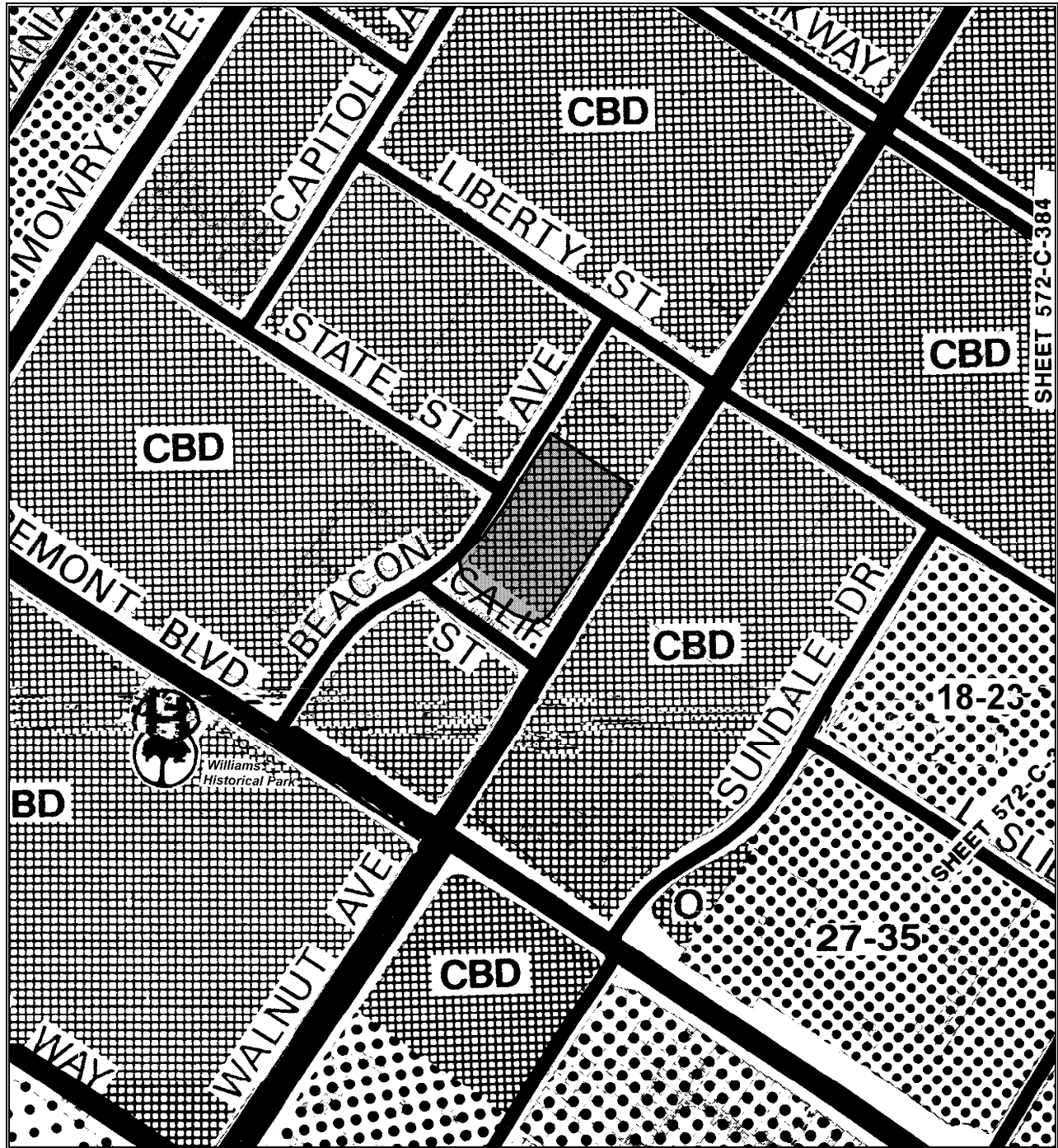
1. Hold public hearing.
2. Recommend the City Council rescind by Ordinance PLN2005-00256 approved December 2006, for a Precise Planned District P-2005-256 to allow the development of 227 condominium units, a 9,900 square foot Civic Park and 5,000 square feet of commercial space at 3651 Walnut Avenue in the Central Business District.
3. Recommend the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan (Exhibit "A") and find this action reflects the independent judgment of the City of Fremont.
4. Find, and recommend to City Council that the location, purpose and extent of the vacation of a portion of California Street and the conveyance of the property to the developer conforms to the General Plan.

5. Recommend City Council find PLN2009-00009, as it related to the general vacation of a portion of California Street as per Exhibit “B”, fulfills the applicable requirements set forth in the Fremont Municipal Code and Section 8324 of the California Streets and Highways Code.
6. Recommend City Council approve PLN2009-00009 to amend the Central Business District Concept Plan in conformance with Exhibit "C" (CBD Concept Plan Amendment Exhibits)).
7. Recommend to the City Council approval of Precise Planned District PLN2009-00009 as shown on Exhibit “D” (Zoning Exhibit) and Exhibit “E” (Project Development Plans) be approved, based upon the findings contained in the report and subject to the conditions of approval set forth in Exhibit 1.
8. Recommend to the City Council approval of Vesting Tentative Tract Map 7986 shown of Exhibit “E” (Vesting Tentative Tract Map 7986) and the Preliminary Grading Plan shown on Exhibit “E” (Preliminary Grading Plan) be approved, subject to the findings and conditions of approval set forth in Exhibit “2” and Exhibit “3”, respectively.

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan



Pln 2009-00009

Planned District Exhibit "D"

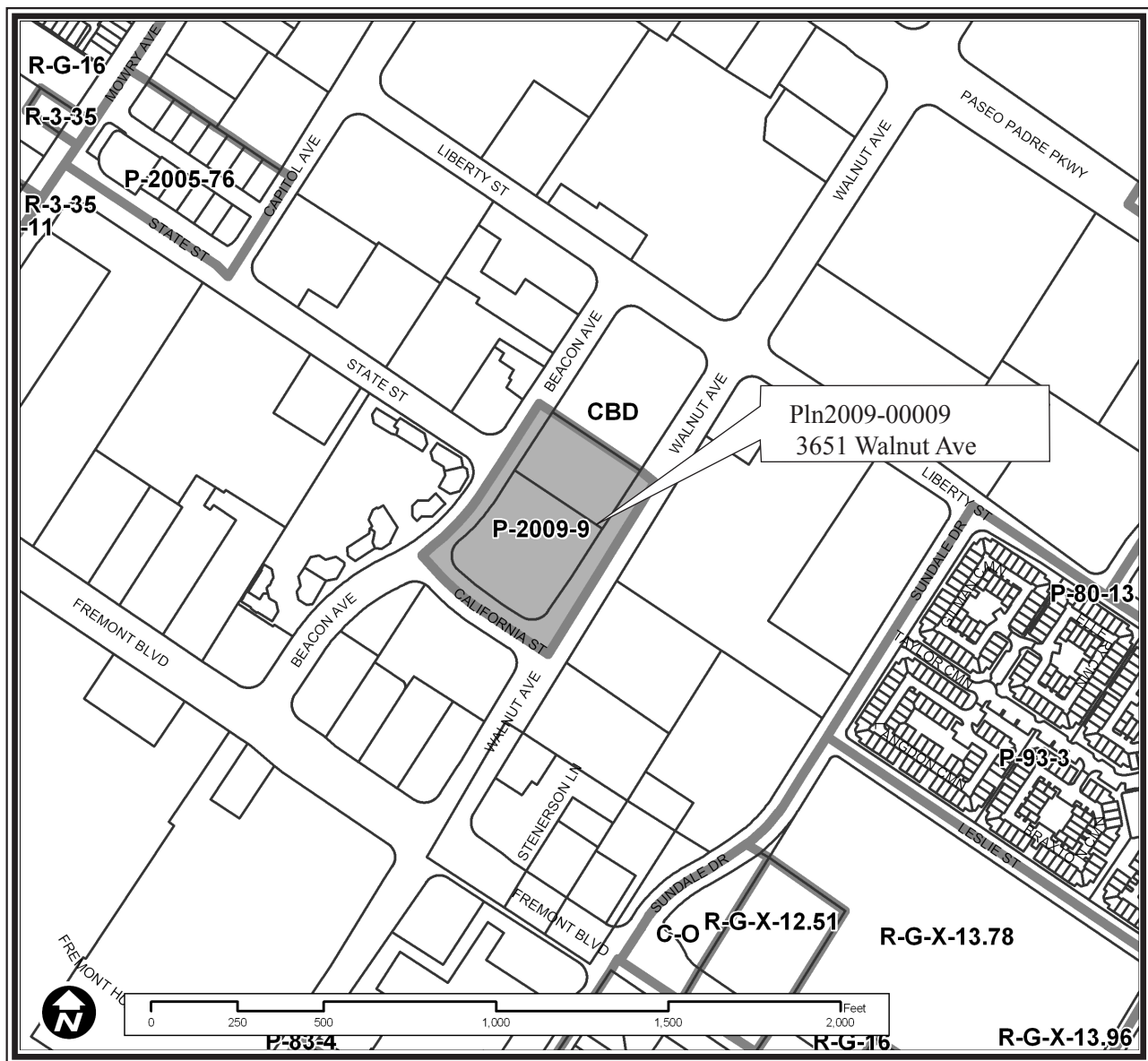
Incorporated as Attachment No. 1

And Made Part of Ordinance No. _____

On the _____ day of _____, 2009.

ZONING MAP (SECTION)

AFFECTS ZONING MAP(S) IN THE CENTRAL PLANNING AREA



Project Name: Urban Housing Group- Walnut Avenue Project

Change From: P-2005-256

To: P-2009-9

[pc on 2009-01-22] 72-380



EXHIBIT 1
Findings and Conditions of Approval for Precise Planned District P-2009-9
Urban Housing Group - Walnut Avenue Project (PLN2009-00009)

FINDINGS

Precise Planned District

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated January 22, 2009, incorporated hereby.

- (a) The proposed "P" district, or a given unit thereof, can be substantially completed within four years of the establishment of the "P" district in that the applicant intends commence construction of the project within twelve to fourteen months;
- (b) That the streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and the project will not generate traffic in such amounts as to overload the street network outside the "P" district in that the Transportation Impact Analysis conducted as part of the Environmental Impact Analysis for the project concluded that the additional traffic generated will not significantly impact existing levels of service on the adjacent roadways, and the developer will be required to construct pedestrian-friendly street frontage improvements and strip all three streets it abuts to coordinate with these improvements;
- (c) That any exception from standard ordinance requirements is warranted by the design and amenities incorporated in the precise site plan, in accord with adopted policy of the Planning Commission and City Council. Based on the incorporation of superior architecture, site design landscaping, and the development of a civic park, this project, as conditioned, is found to meet this requirement.
- (d) That the area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development. This is an infill development, and all of the other land surrounding this site, with the exception of one parcel, has already been developed.
- (e) That the "P" district is in conformance with the General Plan of the City of Fremont. The project conforms to the Central Business District Concept Plan designation of High Density Housing Allowed (50 dwelling units (minimum) per acre), is consistent with and implements the goals and policies of the Land Use and Housing Chapters of the General Plan as enumerated within the staff report. The applicant has applied for a Density Bonus to be allowed to develop above the maximum of 70 dwellings per acre as prescribed in the City's General Plan to 73 dwelling units per acre.
- (f) That the existing or proposed utility services are adequate for the population densities proposed. The site is well served by utilities. None of the responsible utility companies have stated they will be unable to provide the required services to the site.

- (g) All public improvements or facilities required as a part of this approval are directly attributable to the proposed development, and are required for reasons related to public health, safety and welfare.

Parking Modification Finding:

- (i) Due to the site's proximity to alternative transportation (approximately 1/2 mile from Fremont BART and AC transit lines and stops adjacent to the sites Walnut Avenue and Beacon Avenue frontages.), the recommended reduction of 4 parking spaces for the office/commercial space is warranted as alternative transportation is a convenient option for the patrons of the office/commercial space.
- (ii) Due to the projects applicant's desire to create a pedestrian environment as well as the site's location within the CBD, the requested reduction of 4 office/commercial parking spaces is warranted as the desire is to become less dependent on the motor vehicle within the CBD and more dependant on other forms of transportation (walking/biking).
- (iii) Due to proposed development of 31 on-street parking spaces, the requested reduction of 4 parking spaces is warranted as these on-street parking spaces will provide a location for patron of the office/commercial to park, while not impacting other surrounding neighborhoods or areas.
- (iv) That a deviation from Section 8-22009(g)(2) of the FMC which requires a minimum ten-foot inside wheel radius at changes in drive aisle direction, is warranted as drivers within parking garages typically expect a more constrained layout and the majority of drivers within the parking garage will be residents of the development.

General Conditions (Must be satisfied on an on-going basis – Pre, during-, and post construction.)

- A-1. That PLN2005-00256 approved December 2006, by City Council for a Preliminary and Precise Planned District P-2005-256 to allow the development of 227 condominium units, a 9,900 square foot civic park and 5,000 square feet of commercial space at 3651 Walnut Avenue in the Central Business District is herewith rescinded.
- A-2. The approval of Planned District P-2009-9 shall conform to Exhibit "E" (Project Development Plans), and all conditions set forth herein. This approval shall allow for the development of 301 dwelling units, 100 bicycle parking spaces, 502 on-site parking spaces, a 17,000 square foot civic park and approximately 1,200 square feet of office/commercial space, all in general conformity with the conditions and plans of P-2009-9.
- A-3. The proposed project shall comply with all companion conditions of approval relating to Vesting Tentative Tract Map 7986 (Exhibit "2"), Preliminary Grading Plan (Exhibit "3"). All plans shall be designed to be in compliance with applicable Federal, State and local building and fire code requirements.

- A-4. The approval process for uses allowed in the 1,200 square foot office/commercial space shall comply with follow the applicable standards of the Fremont Municipal Code CBD Zoning District (permitted, conditionally permitted, and Zoning Administrator approvals), FCM Title 8, Chapter 2, Article 12.
- A-5. That ten (10) of the units located along the Civic Park shall be designed to accommodate Live/Work units. The Live/Work units shall be permitted to operate a business that consists of a finance, insurance, real estate office, or a general office as a business, or a business service, as defined in the FMC, provided a Zoning Administrator Use Permit has been applied for and granted.
- A-6. All commercial uses in the live/work portion of the project shall be subject to the performance criteria as follows:
- A maximum of one non-resident employee on the premises at any one time.
 - A maximum of three persons may be allowed to participate in the business: a maximum of two persons living in the unit and one non-resident employee.
 - Signs shall be limited to those approved with the future Planned Sign Program for the project.
 - No business that generates noise or odors that may disturb residents shall be allowed.
 - A bathroom, kitchen and sleeping area shall be maintained in each live/work unit.
- A-7. The proposed commercial space and residential lobbies of the development shall be designed with clear glass store fronts typical of pedestrian environments found in a downtown area. The mailboxes for the residents of the development shall be located within the lobby of Buildings A and B.
- A-8. The developer shall construct the Civic Park to the specifications and satisfaction of the City and the park shall be accepted by the City prior to the occupancy of the first dwelling unit.
- A-9. The developer shall maintain the Civic Park to the satisfaction of the City for as long as the project is a rental development, prior to the development becoming a condominium owner-occupied project. The developer shall enter into an Agreement with the City which outlines the required maintenance and capital replacement provisions for the Civic Park during the time period of for which their are maintaining the park. When the developer records the condominium plan and the maintenance of the Civic Park is transferred to the City the developer shall provide the City the monies outlined in Condition A-23 and A-24.
- A-10. The developer shall enter into an agreement with the City of Fremont and provide all necessary easements relating to the pedestrian bridge that connects Buildings A and B, which traverses over the Civic Park. The agreement shall outline but not be limited to, how the maintenance and upkeep of the bridges will occur.
- A-11. The planter walls, seat walls, and game tables to be located within the Civic Park shall be pre-cast concrete with pre-cast caps or a similar material approved by staff during the Development Organization review process.

- A-12. The developer's design team shall work with City staff on the specific location and design of the Civic Park signage, which shall be approved during the Development Organization review process.
- A-13. The developer's design team shall work with City staff to refine the design of the public art and fountain elements. Fountains shall have an automatic fill and drainage to the sanitary sewer system.
- A-14. The placement of trash recepticals, benches, bike racks, light bollards and other site furnishings within the Civic Park shall substantially conform to Sheet L-2 of Exhibit "E" (Project Development Plans) and will be further reviewed through the Development Organization review process to ensure the placement and amount of site furnishings is adequate.
- A-15. Final plans shall be submitted to the Development Organization for review and approval to ensure conformance with relevant codes, policies, and other requirements of the Fremont Municipal Code, all conditions of approval and State and Federal Code that may be applicable.
- A-16. Minor modifications to the approved building designs and siting, elevations and colors may be made, subject to review and approval of the Planning Director or his/her designee if such modifications are in keeping with the architectural statement of the original approval. However, the Planning Director shall retain the authority to determine the level of review required (i.e., depending on the severity of the modification, the project may be referred to the Planning Commission for review and approval).
- A-17. Signage is not a part of this review. The applicant shall submit for a Planned Sign Program that will be subject to review in accordance with the Fremont Municipal Code, Article 21, Sign Regulations. The Planned Sign Program shall be approved prior to the occupancy of the first dwelling unit, live/work unit, or the office/commercial space.
- A-18. The project should achieve a minimum of 50 points and attain the minimum prerequisites and categorical points as measured by the 2007 (or newer version) New Home Construction greenpoint checklist published by Build It Green. Provide a completed checklist to the Planning Division for review and acceptance prior to the issuance of building permit.
- A-19. The developer/property owner of the project site shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.
- A-20. The developer or Property Owners Association shall execute a Maintenance Agreement with the City of Fremont. The Maintenance Agreement shall require the property owners association to

provide for the maintenance, cleaning, and general upkeep of the public street frontages on Beacon Avenue, California Street, and Walnut Avenue. The area of obligation is from the back-of-curb to the property line, which includes, but is not limited to: the public sidewalk, street trees, benches, trash receptacles, bike racks, bollards, and granite spheres within the public right-of-way. The agreement shall also include litter cleanup and sweeping of the on-street parking stalls on Beacon Avenue, California Street, and Walnut Avenue.

- A-21. Pursuant to Article 21.7 [Inclusionary Housing] of the Fremont Municipal Code, the Property Owner(s) shall enter into a BMR Master Developer Agreement with the City to provide at least 15% of total number of residential units made available at affordable housing costs to moderate and low-income households. Ten-percent of the inclusionary units shall be set-aside for moderate income households and five-percent shall be set aside for low-income households. within the for-sale development.

A total of 45 units in the 301-unit "Urban Housing Group – Walnut Avenue Project" shall be available for participation in a below market rate (BMR) affordable housing program, subject to the review and approval of the Office of Housing and Redevelopment. The BMR Master Developer Agreement shall run with the land, made part of the project's conditions of approval, and shall be recorded on the property titles of each parcel designated for the BMR sales program.

The BMR Master Developer Agreement shall include the following provisions:

- BMR units must be affordable to families earning no greater than 110% or below of the county median income as defined by the United States Department of Housing and Urban Development in effect at the time of sale;
- Units shall only be available to eligible first time homebuyers as defined under the California Housing Finance Agency. To the extent permitted by law, preference shall be given persons to those who currently reside, work, or previously resided in the City of Fremont;
- To ensure long-term affordability, and to assist the greatest number of families over the longest feasible time, BMR units shall be subject to resale restrictions under individual agreements developed by the City of Fremont, which shall be binding for a minimum of 30 years, renewable upon resale;
- If units are initially rented, then 15% of the units shall be set-aside at inclusionary rates for moderate income levels (10% of total units) and low-income units (5% of total units). Units initially rented shall be restricted at affordable rates for the period rented. At the time the project converts to for-sale owner occupied units, the inclusionary units (10% moderate and 5% low income) shall be restricted for a minimum of 30 years.
- The BMR sales price shall be computed as follows:
For a two bedroom unit, the sales price shall be computed based upon the maximum program restricted income for a family of three times a multiplier of 3.5, and for a three bedroom unit, the sales price shall be computed based upon the maximum program restricted income for a family of four times a multiplier of 3.5. For April 2008, the sales prices are:

2008 BMR sales price:

2 bedrooms (family of 3 at 110% of area median income): \$298,395

3 bedrooms (family of 4 at 110% of area median income): \$331,450

4 bedrooms (family of 5 at 110% of area median income): \$358,050

The City of Fremont Office of Housing and Redevelopment will conduct the Buyer Selection process and will provide eligible homebuyers to the Developer. The selection process will be described in the BMR Master Developer Agreement.

- A-22 The mitigation measures below shall be implemented at pre-, during-, and/or post-construction intervals, as listed below.

Mitigation Measure #1 – Dust Control:

Prior to issuance of a permit, the following measures shall be included in a dust control plan and noted on construction plans with the contact information for a designated contact person responsible for the on-site implementation of the dust control plan.

1. Water all active construction and site preparation work areas at least twice daily and more often during windy periods.
2. Cover all hauling trucks or maintain at least two (2) feet of freeboard on all loads.
3. Pave, apply water at least twice daily, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas and staging areas.
4. Sweep daily with water sweepers all paved access roads, parking areas, and staging areas, and sweep streets daily with water sweepers if visible soil material is deposited onto adjacent roads.
5. Apply hydroseed or non-toxic soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for a period of 10 days or more).
6. Enclose or securely cover all exposed stockpiles.
7. Replant vegetation in disturbed areas as quickly as possible.
8. Suspend any unmitigated construction activities that cause visible dust plumes to extend beyond the job site.

Mitigation Measure #2 – Pre-construction Survey:

A pre-construction survey for burrowing owls shall be completed in and adjacent to construction areas in conformance with CDFG protocols. The survey will be conducted no more than 30 days prior to the start of construction to minimize the probability of immigration of owls between the time the survey is conducted and initiation of grading. If burrowing owls are detected on or within 250 feet of the project site, Mitigation Measures #3 and #4 shall be implemented.

Mitigation Measure #3 – Buffer Zones:

If burrowing owls are present during non-breeding season (generally September 1 through January 31), a 150 foot buffer zone shall be maintained around the occupied burrow(s), if practicable. If such a buffer is not practicable, then a buffer adequate to avoid injury or mortality of owls shall be maintained, or the birds will be evicted as described in Mitigation Measure #4 below. During the breeding season (generally February 1 through August 31), a 250 foot buffer, within which no new activity shall be permissible, will be maintained between the project activities and occupied burrow(s). Owls present on site after February 1 shall be assumed to be

nesting unless evidence indicates otherwise. This protected buffer area will remain in effect until August 31, or based upon monitoring evidence, until the young owls are foraging independently or the nest is no longer active.

Mitigation Measure #4 – Passive Relocation:

If construction will directly impact occupied burrow(s), eviction of owls shall occur outside the nesting season to prevent injury or mortality of individual owls. No burrowing owls will be evicted from burrows during the nesting period (generally February 1 through August 31) unless evidence indicates that nesting is not actively occurring (e.g., because the owls have not yet begun nesting early in the season, or because young have already fledged late in the season). Relocation of owls during the non-breeding season shall be performed by a qualified biologist using one-way doors, which should be installed in all burrows within the impact area and left in place for at least two nights. These one-way doors will then be removed and the burrows backfilled immediately prior to the initiation of grading.

Mitigation Measure #5 – Exterior-to-Interior Noise:

To achieve an interior noise level of 45 L_{dn} dB within the proposed residences, as well as the City's maximum noise level (L_{max}) criteria, the exterior facades of the buildings must be sound-rated. The following table estimates the necessary mitigation window and door Sound Transmission Class (STC) ratings for a typical room size of 14 feet by 12 feet with windows and/or doors occupying approximately 40% of the exterior wall area. The maximum noise level criteria will govern window and door STC ratings at the perimeter of the site. Meeting the L_{max} 50/55 dB criteria in bedrooms and other rooms using the maximum noise levels measured at the site requires CMU or double-stud exterior wall assemblies with non-operable windows comprised of thick glass and large air spaces. The following STC ratings are based on typical instantaneous levels rather than the absolute highest levels measures.

Preliminary Window and Door STC Ratings

Location	STC Rating to Achieve:	
	L_{dn} of 45 DB	L_{max} 50 dB in Bedrooms; 55 dB in other rooms
Walnut Avenue Façade	STC 30 to 34	STC 41*; 38
California Street Façade, State Street Façade, Beacon Avenue Façade	STC 30 to 33	STC 37; 33
Northern Façade between Beacon and Walnut Avenues	STC 26 to 30	STC 28 to 38; 26 to 34

*Requires an upgraded exterior wall assembly including staggered-stud or double-stud exterior walls or adding resilient channels and an additional layer of gypsum board to the interior. Specific construction materials and methods should be determined during the design phase of project development.

Exterior walls assemblies shall meet STC 45 or higher, which could consist of 3-coat plaster on the outside of 2x4 wood studs with batt insulation in the stud cavity and 1-layer of gypsum board on the interior. Window and door ratings must be for the complete assemblies, including frames and operable sashes. Sound insulation ratings shall be from tests conducted by an NVLAP

accredited laboratory. Sound insulation ratings of up to STC 36 STC can typically be achieved using high quality insulated windows with glazing selected to meet the required rating. Sound ratings between STC 36 and 39 can be achieved by some specialty window manufacturers using 1-inch or 1½-inch glazing sections (e.g., Window Technologies by Century Manufacturing). Ratings above STC 39 typically require dual sash or “four track” windows with frames that are 5- to 6-inches deep. Where windows and/or doors must be kept closed to achieve the interior noise goal of L_{dn} 45 dB, a ventilation or air conditioning system must be installed to provide a habitable environment. This applies to all units not facing interior courtyards and shall be coordinated with the project mechanical engineer. The system must not compromise the sound insulation of the exterior wall assemblies.

Prior to issuance of building permit, the applicant shall submit a supplemental acoustic analysis prepared by a noise professional demonstrating how the project has been designed to achieve the above stated interior noise attenuation.

Payment of City Fees & Maintenance Funding

- A-23 The project shall be subject to all City-wide development impact fees. These fees may include but not limited to, park dedication in-lieu fee, park facilities, fire protection, capital facilities and traffic impact. Since the developer will be constructing a public turn key park, the developer will be eligible for in lieu fee credits equal to the value of the land dedication and construction of park improvements and amenities not to exceed the required park in-lieu and facilities fees.
- A-24 As part of the Precise Planned District rezoning P-2009-9 the Owner has agreed to contribute \$1.5 million dollars to the City when the City takes over maintenance of the Civic Park. The amount to be contributed will increase at the rate of the Consumer Price Index (CPI) in the San Francisco-Oakland-San Jose area starting five years after the acceptance of the Civic Park by the City. The contribution will be used for a Maintenance and Capital Funding Source for the maintenance and improvements of Civic parks within the Focus Area of the CBD. The contribution of the \$1.5 million dollars, plus an increase based on the CPI factor above shall be due and paid to the City no less than ninety days prior to the close of escrow on the first unit in the condominium project.
- A-25 A deed restriction shall be placed on the subject site identifying the requirement for the payment monies to the City as outlined in the above condition (A-23), to the satisfaction of the City Attorney.

Special Conditions (Must be satisfied on an on-going basis and included in the Property Maintenance Agreement (Rental Project)Property Owner’s Covenants, Conditions and Restrictions (CC&R’s) (Condominium Project)

- B-1. All requirements of the CC&R’s shall be addressed in either the Property Management Agreement or the Resident Lease forms to the satisfaction of the City for the time period that the units are rented. The Property Management Agreement and Resident Lease Forms shall be submitted to the Development Organization with the building plans for review and approval by staff.

- B-2. A Property Owner's Association shall be formed and shall covenant and be responsible for the maintenance of all commonly owned facilities, which are not maintained by the public utility agency. CC&R's, including these imposed conditions, shall be submitted to the Development Organization (or during the tract map improvement plan review process) for review and approval, prior to the final map recordation.
- B-3. All on-site parking spaces designed for guest parking shall be signed as such and be restricted for guest use only.
- B-4. Satellite dishes and air conditioning units shall be prohibited from being placed on the balconies and/or the exterior of any individual units. The two (2) buildings shall be designed and wired to provide satellite reception and air conditioning from a centralized system within or on top of the buildings.
- B-5. The exterior storage of bikes and any other items on the balconies shall be prohibited. The balconies can be furnished with typical outdoor furniture such as chairs, tables and flower pots.
- B-6. The Property Owner's Association shall be required to contract with a professional management firm to handle maintenance operations and waste/recycling collection procedures. Documentation of such contract shall be submitted to the City prior to the issuance of a building permit. All commonly owned facilities shall be well-maintained in a good condition.
- B-7. In the interest of aesthetics, appearance, and safety, the garage gate at the entrance to the parking garage shall be maintained in a closed position, except during entering or exiting movements from the garage.
- B-8. The Property Owner's Association shall be responsible for the maintenance of all common areas. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides, which can contribute to urban runoff pollution.
- B-9. The Property Owner's Association is to periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all occupants.
- B-10. The Property Owner's Association shall be responsible for litter control and sweeping of all paved surfaces within the development. All private storm drain systems are to be cleaned immediately before the commencement of the rainy season (October 15). Additional cleaning may be required by the City of Fremont.
- B-11. All roof-mounted and other mechanical equipment shall be screened from view from adjacent public rights-of-way.
- B-12. Garbage, trash or recycling containers shall be contained within the structures except such containers may be placed at curbside in the designated areas along Walnut Avenue and Beacon

Avenue 1-hour prior to and post on the designated garbage pick-up day as identified in Exhibit "E" (Project Development Plans)

- B-13. A provision shall be included in the CC&R's stating that the payment of the utility (e.g., water, energy) bills for all common facilities, including its maintenance, are the obligations of the Property Owner's Association.
- B-14. The project Covenants, Conditions and Restrictions (CC&R's) shall include stormwater maintenance requirements. At a minimum, the following statements or similar shall be included in the CC&R's: Stormwater Treatment Measure Maintenance: inspect and maintain the on-site stormwater treatment measures (swales, bio-retention ponds, media filters, etc.) and storm drain system on an annual basis and provide maintenance and repairs, as required. The Property Owner's Association shall maintain an inspection and maintenance record on file that shall be made available to the City upon request. Storm drains shall be cleaned at least annually before commencement of the rainy season, before October 15 of each year. Stormwater treatment measures shall be maintained by the Property Owner's Association in accordance with the Stormwater Treatment Measures Maintenance Agreement between the Declarant and the City.
- B-15. The project and project plans shall comply with the City of Fremont "Stormwater Management and National Pollution Discharge Elimination System (NPDES) requirements," which is on file with the City's Environmental Services Division and is posted on the City website.
- B-16. All other CC&R special conditions/provisions included as companion conditions within Exhibits "2" and "3" shall be included in the CC&R's for the project.

General Conditions Site Plan and Building Design – Prior to Building Permit Issuance

- C-1. All utility and fire appurtenances, meters and risers shall be concealed or screened from view by materials of a design and composition compatible with the architectural treatment of the project.
- C-2. All units shall be pre-wired with exterior junction boxes to provide satellite dish cable connections. In addition, all bedrooms, including the living room, shall be pre-wired with phone and cable connections. No external wiring of these utilities shall be permitted.

Engineering Conditions:

- E-1 The developer shall provide signs informing motorists and pedestrians that the driveway and vehicle ramp into the parking garage (Building A) is accessible to residents and guests only. The sign design and location shall be consistent with the building design, included in the building plans, and subject to Development Organization review and approval prior to issuance of building permits.
- E-2 The parking garage design shall include the following: a detailed lighting plan; location and specifications of an emergency phone accessible to users of the parking garage; and interior paint color that is reflective. Parking garage plans shall be reviewed by the Police Department and

shall be subject to Development Organization review and approval prior to issuance of building permits.

- E-3 The provided Storm Water Control Plan (Exhibit "E" - Project Development Plans -Sheet C-5) is approved in concept only. Final approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate the plan complies with the Alameda Countywide NPDES Municipal Stormwater Permit, subject to Development Organization approval prior to issuance of building permit, or subject to City Engineer approval prior to recording the final map.
- E-4 In accordance with the Alameda Countywide NPDES Municipal Stormwater Permit, the developer shall enter into an agreement with the City of Fremont to operate and maintain said treatment controls in perpetuity. The Stormwater Treatment Measures Maintenance Agreement is a legal document and is recorded or prior to issuance of the building permit, whichever occurs first. Responsibility for the Operation and Maintenance Agreement shall be legally transferred to all subsequent property owners. The agreement shall be recorded at the same time that the final map is recorded. The agreement will obligate the Property Owner's Association for the inspection, maintenance, cleaning, and replacement of filters for the proposed storm water treatment vaults.
- E-5 The developer is responsible for ensuring that all contractors and subcontractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP) and the developer is responsible that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
- E-6 All public and private storm drain inlets are to be stenciled "No Dumping - Drains to Bay" using thermoplastic stencils purchased from the City of Fremont Environmental Services Division. Alternative inlet stencils or marking may be permitted, subject to approval by the Environmental Services Division.
- E-7 All metal roofs, including galvanized shall be coated with rust-inhibitive paint.
- E-8 Interior level parking garage floor drains are discouraged. If floor drains are necessary, stormwater flow shall be connected to a stormwater treatment system approved by the City of Fremont prior to discharge into the municipal storm drain system.
- E-9 Pools (including swimming pools, hot tubs, spas and fountains) shall not be directly connected to the storm drain or sanitary sewer system. When draining is necessary, a hose or other temporary system shall be directed into a sanitary sewer clean out. The clean out shall be installed in a readily accessible area. The developer shall contact Union Sanitary District for specific connection and discharge requirements.
- E-10 Food service facilities shall have a sink or similar floor mat, container, and equipment cleaning area connected to the sanitary sewer system. The cleaning area shall be large enough to clean the largest mat or piece of equipment to be cleaned. The cleaning area shall be indoors or in a roofed area outdoors; both areas must be plumbed to the sanitary sewer. The developer shall contact Union Sanitary District for specific connection and discharge requirements.

- E-11 Fire sprinkler test water shall be drained to the sanitary sewer system with approval from Union Sanitary District or drain to landscaped areas where feasible. The applicant shall contact Union Sanitary District for specific connection and discharge requirements.
- E-12 Boiler drain lines shall not discharge to the storm drain system. Boiler drain lines shall be directly or indirectly connected to the sanitary sewer system. The applicant shall contact Union Sanitary District for specific connection and discharge requirements.
- E-13 The public street improvements on Beacon Avenue, California Street, and Walnut Avenue, may include designs, colors, materials, and fixtures that are consistent with the CBD Concept Plan, but which are currently not part of the City Standard Details. As part of the subdivision improvement plans, the developer shall provide City staff with proposed designs, details, manufacturers model information, and specifications for all street improvements which are not City Standard Details.

Fire Conditions:

- F-1 The applicant shall meet all the requirements delineated on Sheet A-0A of Exhibit "E" (Project Development Plans)

Landscape Conditions:

- L-1 Tree grates in the public right-of-way shall be a minimum of 5'x5' City Standard tree grate.
- L-2 All tree sizes throughout the project shall be no smaller than 24" box, except that all trees within the Civic Park shall not be less than 36" box.
- L-3 Specimen Oak Trees on the corner of California and Beacon and in Civic Park shall be no smaller than 60" box.
- L-4 All benches in the public areas shall have arm rests spaced no further than three feet on center.
- L-5 All site furnishings shall be as shown in Exhibit "E" (Project Development Plans - Sheet L4), including but not limited to, Presidio Benches, Presidio Litter Receptacle, Loop Bick Rack, Neenah Tree Guard, La Paz Cobbles, Corral Bollard Light, 3' diameter Granite Spheres, Bounce Pole Light, precast concrete capped wall, (ledge) etc.
- L-6 All site furnishings in public areas shall be in-ground mounted, not surface mounted.
- L-7 All walls in public areas shall be designed to resist skateboard damage by method other than skate blocks.
- L-8 All signs and specimen Oak Trees shall have uplights in Civic Park.
- L-9 "No Parking" sign shall not be mounted on tree guard or other site furnishings.

- L-10 The trellis shall be steel and concrete (as shown), not wood. The final design, material selection and color treatment of the metal and concrete trellis shall be subject to the review and approval of the Development Organization.
- L-11 A lighting plan, submitted in conjunction with a photometric plan, shall be subject to review and approval during the Development Organization review process. In compliance with the Fremont Municipal Code, lighting shall be reviewed to avoid substantial light glare that may have an impact on day or nighttime views in the area. All wall lighting fixtures or sconces shall be of high quality, decorative lighting fixtures with concealed lighting elements. All pole lighting locations shall be coordinated with the placement of trees to eliminate conflicts between the trees and lights and to ensure that the light is not blocked by the growth of the trees.
- L-12 This project shall comply with all provisions of the Landscape Development Requirements and Policies (LDRP).
- L-13 The Civic Park shall be reviewed and approved thorough the Improvement Plan review process and shall include the approval of the City of Fremont Park Superintendent. Plans for the Civic Park and City Right of Way shall identify all materials, finishes, colors, model numbers, methods of installation, connection details, etc. Civic Park plans, including all disciplines, shall be prepared, coordinated, and reviewed with the public improvement plan set, but also capable of standing alone as a separate group of sheets outside the improvement plan set.
- L-14 The proposed lawn to be installed within the Civic Park shall be constructed to meet the specifications of a sand based turf field to withstand the anticipated heavy use of this area.
- L-15 The proposed Bounce pedestrian pole light and Corral bollard light are conditionally approved until the City determines a standard light fixture for use within the central Business District. This project shall use the approved standard light fixture, if it has been identified prior to the approval of the construction documents.
- L-16 The landscape design and approval shall meet the Best Management Practices for sustainable environments. Pavement, fencing and other landscape site improvements shall be constructed of durable, rot resistant and sustainable materials. Materials and finishes to be used in the Civic Park shall be durable and vandal resistant. Trees and shrubs shall be selected to be well suited to the spaces available and to require minimal pruning and maintenance once established.

Environmental Services

Design Stage:

- M-1 Applicant will be responsible for incorporating all relevant information in the *Waste Handling Guidelines* document into the site plan and finished product.
- M-2 All residential dwelling units shall provide a minimum of six (6) cubic feet for indoor temporary storage of garbage and recyclable material. Storage is sufficient on plans.

Demolition/Construction Stage:

- M-3 This project will generate large amounts of debris that must be recycled, including but not limited to scrap metal, drywall, wood, and asphalt/concrete. Applicant must reuse or recycle 100% of the asphalt and concrete, and reuse or recycle a minimum of 50% of the remaining debris generated from the project.
- M-4 The applicant must submit a City of Fremont *Waste Handling Plan* prior to beginning any demolition or construction. The *Waste Handling Plan* must be approved before any permits are issued.
- M-5 The applicant may contract with any recycling company licensed to do business in Fremont for salvage or recycling of construction and demolition materials. Recycling debris boxes may not contain more than 10% by weight of solid waste or other non-recyclable material (FMC IV, Ch 2, 4-2303).
- M-6 Plant and tree debris should not be mixed with other wastes. Plant and tree debris must be chipped on site or taken to a grinding/composting facility.
- M-7 The contractor must ensure that trash (non-recyclable debris) is removed from the site per the Fremont Municipal Code, by one or more of the following ways (FMC IV, Ch 2, 4-2300):
- a. Contacting the City's franchised waste hauler, Allied Waste Services, to arrange for use of debris box containers for all materials to be landfilled;
 - b. Removal from the premises by the construction or demolition contractor, using their own equipment and vehicles, as part of a total construction, remodeling or demolition service offered by that contractor.
- M-8 Within 30 days of completion of the work, and prior to receiving a certificate of occupancy, the applicant must file a *Waste Disposal & Diversion Report*, documenting actual diversion and disposal of construction and demolition debris, along with weight tags and receipts.

During Construction Conditions (Conditions that must be satisfied during construction.)

- R-1 Prior to the inspection of the roof sheathing, the project manager or supervising general contractor shall contact the Development Organization at (510) 494-4561 for an interim inspection by Planning Division staff of the structure to ensure that the construction is consistent with the approved architecture and building design.
- R-2 Construction hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
- a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturday & Holiday, 9 a.m. to 6 p.m.
 - c. Sunday, no construction activity allowed

- R-3 The applicant must immediately notify the Fremont Fire Department, Hazardous Materials Unit of any underground pipes, tanks or structures; any suspected or actual contaminated soils; or other environmental anomalies encountered during site development activities. Any confirmed environmental liabilities will need to be remedied prior to proceeding with site development.

Final Occupancy Conditions (Must be satisfied prior to occupancy)

- W-1 A professional engineer registered in the State of California shall be retained to prepare a final grading plan, and upon the completion of the grading submit to the Development Organization a statement that the as-built grading conditions do not deviate from the approved plan by more than one foot of vertical elevation, subject to the review and approval of staff prior to the issuance of occupancy permits for each structure.
- W-2 The project architect shall submit a letter to the City certifying that the buildings have been constructed in conformance with the approved architectural plans, subject to the review and approval of the Development Organization.
- W-3 The project landscape architect shall submit a letter to the City certifying that the on-site and streetscape (ROW) landscaping have been constructed in conformance with the approved landscape and irrigation plan, subject to the review and approval of the Development Organization.
- W-4 The applicant shall have a key box (Knox brand) located outside of buildings/gates and provide keys to the Fire Department so they may gain access. Vehicle gates shall use Knox lock or keyed over-ride switch. Gates shall also have an infrared receiver installed. Applications can be obtained at Fire Administration office, 3300 Capital Ave, Fremont.
- W-5 Addresses must always be visible from Public Street. Provide site map at building entrances prior to issuance of building permits.
- W-6 Prior to building occupancy, the project civil engineer shall submit a statement certifying that the installations of all post-construction stormwater treatment controls have been done properly and per the approved plans.

END OF CONDITIONS

EXHIBIT 2
Findings and Conditions of Approval for Vesting Tentative Tract Map 7986
Urban Housing Group - Walnut Avenue Project (PLN2009-00009)

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated January 22, 2009, incorporated herein by reference.

- A. The proposed map satisfies the requirements and conditions imposed by the State Subdivision Map Act (Map Act) and the City of Fremont Subdivision Ordinance, because the procedural requirements of the Map Act are being followed and the proposed lots conform to the standards of Planned District, P-2009-9.
- B. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the Central Business District (CBD) Concept Plan, which states "Housing is Encouraged" at a minimum of 50 units per acre and the project proposes 73 units per acre.
- C. The site is physically suitable for the type and proposed density of the development because the project site is located within the Central Business District (CBD), where increased density is encouraged to create a sense of place. The proposed development are will consist of 4.1 acres on a topographically flat site, which can sufficiently accommodate they type of land use proposed.
- D. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, because of the design and location (infill) of the development.
- E. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, because the review process of the subdivision has taken those concerns into consideration and has found the proposal in conformance with the City of Fremont's policies. The proposed project would not be a user or generator of hazardous materials or waste.
- F. The design of the subdivision and the type of improvements will not conflict with any easements required for the public at large for utilities or access within the proposed subdivision. As part of the proposal, the applicant will be dedicating numerous public easements (e.g. utility easements and emergency vehicle access) to provide access to and serve the development project. The applicant is in the process of completing a general vacation of a portion of California Avenue.

TENTATIVE MAP CONDITIONS OF APPROVAL:

- 1. The project shall conform to Exhibit "F" (Vesting Tentative Map 7986), all conditions of approval set forth herein, and the conditions of approval of Precise Planned District P-2009-9 (Exhibit 1) and Preliminary Grading Plan (Exhibit 3).
- 2. Approval of Vesting Tentative Tract Map 7986 shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Fremont Municipal Code consistent with the State Subdivision Map Act. This Vesting Tentative

Tract Map shall expire twenty-four (24) months after the date of tentative map approval unless tentative map extensions are approved in accordance with the State Subdivision Map Act.

3. Approval of this Vesting Tentative Tract Map shall be effective only after City Council approval of the Precise Planned District P-2009-9, and after City Council adoption of the Mitigated Negative Declaration under CEQA.
4. The final map and subdivision improvement plans shall be submitted to the Engineering Division for review to ensure conformance with relevant codes, policies, and other requirements of the Fremont Municipal Code.
5. The developer shall dedicate in fee Lot A (Civic Park) to the City of Fremont. The owner shall prepare the grant deed for the Lot A dedication and submit the deed as part of the final map application. The grant deed shall be subject to review by the City Engineer and City Attorney. The grant deed shall be recorded immediately after the final map and subdivision improvement agreement are recorded.
6. The developer shall install complete park improvements on Lot A (Civic Park). Construction plans for the park improvements shall be included as part of the subdivision improvement plans. The park improvements shall be included as part of the subdivision improvement agreement and subdivision guarantee. Lot A (Civic Park) improvements shall be in substantial conformance with Exhibit "E" (Project Development Plans)
7. The developer shall dedicate street right-of-way, remove existing street improvements, and install new street improvements on Beacon Avenue, as shown on Vesting Tentative Tract Map 7986. The required right-of-way dedication is two feet wide along the project frontage, making a total right-of-way width of eighty-eight feet. Required improvements include, but are not limited to: removal of the existing curb, gutter, sidewalk, and pavement; relocation or removal of existing utilities that conflict with the new improvements, such as storm drain inlets, fire hydrants, and street lights; installation of curb, gutter, sidewalk, pavement, street trees, utilities, street lights, and fire hydrants; and restriping of Beacon Avenue from Liberty Street to California Street.
8. The developer shall remove existing street improvements and install new street improvements on California Street, as shown on Vesting Tentative Tract Map 7986. Required improvements include, but are not limited to: removal of existing curb, gutter, sidewalk, pavement, and utilities along the project frontage; installation of new curb, gutter, sidewalk, street trees, utility mains, street lights, and fire hydrants; restriping the entire street; and completing a full-width grind and overlay of the pavement, due to the removal of the existing utility mains.
9. The developer shall remove existing street improvements and install new street improvements on Walnut Avenue, as shown on the Vesting Tentative Tract Map 7986. Required improvements include, but are not limited to: partial removal of the existing curb, gutter, and sidewalk; removal of the right-turn taper at California Street; relocation or removal of existing utilities that conflict with the new improvements, such as storm drain inlets, fire hydrants, and street lights; installation of curb, gutter, sidewalk, street trees, utilities, street lights, and fire hydrants; and narrowing the existing median by three feet by removing the existing curb, a portion of the

median, and installing new curb and pavement. The developer shall also grind and overlay the existing asphalt pavement on the southwest bound lanes of Walnut Avenue, along the project frontage and through the Walnut/California intersection. The extent of grind and overlay of existing Walnut Avenue pavement shall be determined by the City Engineer during the review of the subdivision improvement plans.

10. The developer shall modify the existing left-turn lane and median on Walnut Avenue, for left turns from Walnut onto California Street, by reducing the turn lane length and reducing the median “nose” by ten feet. The lane and median modifications are subject to approval of the City Engineer.
11. The developer shall stripe and sign Beacon Avenue, California Street, and Walnut Avenue, as shown on the Signing and Striping Plan, Sheet C-7, of Exhibit “E” (Project Development Plans) Restriping shall include the crosswalks at the following intersections: Beacon/California; Beacon/Liberty; Beacon/State; and California/Walnut. The signing and striping plan shall be part of the subdivision improvement plans and shall be subject to review, modification, and approval of the City Engineer and City Transportation Engineering Division.
12. The public street improvements on Beacon Avenue, California Street, and Walnut Avenue, may include designs, colors, materials, and fixtures that are consistent with the CBD Concept Plan, but which are currently not part of the City Standard Details. As part of the subdivision improvement plans, the developer shall provide City staff with proposed designs, details, manufacturers model information, and specifications for all street improvements which are not City Standard Details.
13. The streetlight plan and joint trench plan shall be submitted by the developer with the first subdivision plan check for the street improvement plans and final map. The final streetlight plan and joint trench plan shall be completed prior to final map approval.
14. The developer shall request P.G.&E. to commence with the design of the utility underground work for the proposed development after the City approval of the tentative map.
15. Pursuant to Government Code Section 66474.9, the Subdivider, or any agent thereof, or successor thereto, shall defend, indemnify, and hold harmless the City of Fremont, its officials, employees or agents (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the City's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.
16. All new utility service connections, including electrical and communications, shall be installed underground. Electrical transformers shall be installed in underground vaults within an appropriate utility easement or public service easement.
17. The project storm drain system shall conform to City standards and shall be subject to review and approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

18. The developer shall submit a detailed geotechnical report with the first subdivision plan check, including recommendations regarding pavement structural sections, prepared by a qualified engineer registered by the State of California. The soils report shall include specific recommendations for on site pavement areas that will experience repeated exposure to heavy vehicle loads. The subdivision improvement plans, including utility plans, shall be designed in accordance with the required geotechnical report. Grading operations shall be supervised by an engineer.
19. A Geotechnical Engineer shall be retained by the developer to review the final grading plans and specifications. The developer's Geotechnical Engineer shall approve the grading plans prior to City approval of the subdivision improvement plans or issuance of the grading permit.
20. The developer shall provide adequate dust control measures at all times during the grading and hauling operations. All trucks hauling export and import materials shall be provided with tarp cover at all times. Spillage of haul materials and mud-tracking on the haul routes shall be prevented at all times. Any violation shall be subject to the suspension of the grading permit.
21. The project water system shall conform to Alameda County Water District (ACWD) standards and shall be subject to review and approval of ACWD and the City Engineer. As shown on Vesting Tentative Tract Map 7986, redundant master water meters shall be provided on Lot 2 (Building B) (168 dwelling units to minimize water service disruptions during repair or maintenance of public water mains or service lines. Building B's master water meters shall be served from water mains in two separate streets.
22. The developer shall install sub-meters for all units that are served by a master water meter. The details of sub-metering system shall be subject to review by the ACWD. Prior to submitting subdivision improvement plans, the developer shall determine what criteria, if any, the California Department of Food and Agriculture, Division of Measurement Standards (CDFA DMS), will require for sub-meters serving the project.
23. The retail commercial unit shall have a dedicated water service and meter that is separate from the master meter serving the residential units.
24. The developer shall provide for a functional system to control erosion and siltation during and after grading subject to review and approval by the City Engineer. An erosion and sediment control plan shall be included as part of the grading plans.
25. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
26. Prior to issuance of a grading or construction permit for land disturbance greater than one acre, the developer is to provide evidence that a Notice of Intent has been filed and with the State of California Water Resources Control Board. Evidence shall include the WDID number assigned by the State. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).

27. The subdivision improvement plans shall include storm water treatment plans and calculations that comply with Planned District P-2009-9 and that identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff.
28. The concept storm water treatment measures, as shown on Vesting Tentative Tract Map 7986 plans (Sheet C-5), are for informational purposes only and are not being approved as part of the Vesting Tentative Tract Map 7986. The storm water treatment plan shall be part of the subdivision improvement plans and shall be subject to review and approval of the City Engineer and Environmental Services Manager.
29. The developer and project civil engineer shall work with City staff to revise the design and specifications for storm water treatment measures within the public streets (Beacon Avenue, California Street, and Walnut Avenue). Alternative treatment measures, such as landscaped based infiltration planters or hydrodynamic separators, shall be used in lieu of installing the proposed proprietary treatment vaults (Contech MFS storm water treatment units), in order to reduce the long-term public maintenance requirements for the storm water treatment measures. The storm water treatment plan, including the design and specifications for proprietary treatment devices in the public right-of-way, is subject to review and approval of the City Engineer and Environmental Services Manager.

END OF CONDITIONS

EXHIBIT 3
Findings and Conditions of Approval for a Preliminary Grading Plan
Urban Housing Group - Walnut Avenue Project (PLN2009-00009)

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated January 22, 2009, incorporated herein by reference.

1. The proposed project described in the application will not have an appearance, due to the grading, excavation, or fill, substantially and negatively different from the existing natural appearance.
2. The proposed project described in the application will not result in geologic or topographic instability on or near the site.
3. The proposed project described in the application will not endanger public sewers, storm drains, watercourses, streets, street improvements, or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way. The design team has designed a conceptual stormwater landscape-based treatment plan, which has been reviewed as part of this application. Appropriate standards for development and storm water best Management Practices (BMP) will implement the Goals of the Alameda Countywide Clean Water Program. The project also includes standard practices to address storm water runoff standards for compliance with City NPDES requirements and erosion control measures to prevent soil, dirt, debris, or other pollutants from entering the storm drain system and natural watercourses during and after construction.
4. The proposed development is not in any special studies zone nor is there evidence of presence of any fault or active slides per official maps issued by the U.S. Geological Survey and the California Division of Mines and Geology.
5. The proposed project described in the application will not unacceptably affect the health, safety, and or welfare of adjacent residents or landowners, nor the citizens of Fremont.
6. The development of the land is well defined because the design of the subdivision and proposed improvements are in conformance with the City of Fremont's applicable codes and policies.

PRELIMINARY GRADING PLAN CONDITIONS OF APPROVAL:

1. The project shall conform with Exhibit "E" (Preliminary Grading Plan), all conditions of approval set forth herein, and all conditions of approval of the Preliminary and Precise Planned District P-2009-9 and Vesting Tentative Tract Map 7986.
2. Approval of this Preliminary Grading Plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.

3. Approval of this Preliminary Grading Plan shall run concurrent with the approval and subsequent extensions of Vesting Tentative Tract Map 7986. Approval of this Preliminary Grading Plan shall terminate upon the expiration of Vesting Tentative Tract Map 7986.
4. The conceptual storm water treatment measures, as shown on the Vesting Tentative Tract Map plans (Exhibit "E" Vesting Tentative Tract Map 7986 - Sheet C-5), are for informational purposes only and are not being approved as part of the preliminary grading plan.
5. The applicant may be allowed grading deviation up to a maximum of one foot (plus or minus) between the Preliminary Grading Plan and the final grading plan. Deviation over one foot may be referred to the Planning Commission, subject to recommendation of the City Engineer.

END OF CONDITIONS

**This Page Left
Blank Intentionally**

ACRONYMS

ABAG	Association of Bay Area Governments	HBA	Home Builders Association
ACCMA	Alameda County Congestion Management Agency	HRC	Human Relations Commission
ACE	Altamont Commuter Express	IS	Initial Study (CEQA)
ACFCD	Alameda County Flood Control District	JPA	Joint Powers Authority
ACTA	Alameda County Transportation Authority	Ldn/DNL	Day-Night Average Sound Level
ACTIA	Alameda County Transportation Improvement Authority	LLMD	Lighting and Landscaping Maintenance District
ACWD	Alameda County Water District	LOS	Level of Service
BAAQMD	Bay Area Air Quality Management District	MND	Mitigated Negative Declaration (CEQA)
BART	Bay Area Rapid Transit	MMRP	Mitigation Monitoring and Reporting Program (CEQA)
BCDC	Bay Conservation & Development Commission	MTC	Metropolitan Transportation Commission
BMPs	Best Management Practices	NEPA	National Environmental Policy Act
BMR	Below Market Rate	ND	Negative Declaration (CEQA)
CBD	Central Business District	NOC	Notice of Completion (CEQA)
CC&R's	Covenants, Conditions & Restrictions	NOD	Notice of Determination (CEQA)
CDBG	Community Development Block Grant	NOP	Notice of Preparation
CDD	Community Development Department	NPDES	National Pollutant Discharge Elimination System
CEQA	California Environmental Quality Act	PC	Planning Commission
CIP	Capital Improvement Program	PD	Planned District
CMA	Congestion Management Agency	PUC	Public Utilities Commission
COF	City of Fremont	PVAW	Private Vehicle Accessway
CUP	Conditional Use Permit	PWC	Public Works Contract
dB	Decibel	RDA	Redevelopment Agency
DEIR	Draft Environmental Impact Report (CEQA)	RFP	Request for Proposals
DO	Development Organization	RFQ	Request for Qualifications
DU/AC	Dwelling Units Per Acre	RHNA	Regional Housing Needs Allocation
EBRPD	East Bay Regional Park District	ROP	Regional Occupational Program
EDAB	Economic Development Alliance for Business (County)	ROW	Right of Way
EDAC	Economic Development Advisory Commission (City)	RTC	Response to Comments (CEQA)
EIA	Environmental Impact Analysis	RWQCB	Regional Water Quality Control Board
EIR	Environmental Impact Report (CEQA)	SPAA	Site Plan and Architectural Approval
EIS	Environmental Impact Statement (NEPA)	STIP	State Transportation Improvement Program
FAR	Floor Area Ratio	TCRDF	Tri-Cities Recycling and Disposal Facility
FEIR	Final Environmental Impact Report (CEQA)	T&O	Transportation and Operations Department
FEMA	Federal Emergency Management Agency	TOD	Transit Oriented Development
FFD	Fremont Fire Department	TS/MRF	Transfer Station/Materials Recovery Facility
FMC	Fremont Municipal Code	UBC	Uniform Building Code
FPD	Fremont Police Department	USD	Union Sanitary District
FUSD	Fremont Unified School District	VTa	Santa Clara Valley Transportation Authority
GIS	Geographic Information System	WMA	Waste Management Authority
GPA	General Plan Amendment	ZA	Zoning Administrator
HARB	Historical Architectural Review Board	ZAP	Zoning Administrator Permit
		ZTA	Zoning Text Amendment

PLEASE DO NOT REMOVE FROM PACKET

2009 PLANNING COMMISSION MEETINGS

Date	Meeting Type
1/08	Planning Commission Meeting
1/15	Long Range/General Plan Meeting for Planning Commission
1/22	Planning Commission Meeting
2/12	Planning Commission Meeting
2/19	Long Range/General Plan Meeting for Planning Commission
2/26	Planning Commission Meeting
3/12	Planning Commission Meeting
3/19	Long Range/General Plan Meeting for Planning Commission
3/26	Planning Commission Meeting
4/9	Planning Commission Meeting
4/16	Long Range/General Plan Meeting for Planning Commission
4/23	Planning Commission Meeting
5/14	Planning Commission Meeting
5/21	Long Range/General Plan Meeting for Planning Commission
5/28	Planning Commission Meeting
6/11	Planning Commission Meeting
6/18	Long Range/General Plan Meeting for Planning Commission
6/25	Planning Commission Meeting
7/9	Planning Commission Meeting
7/16	Long Range/General Plan Meeting for Planning Commission
7/23	Planning Commission Meeting
8/27	Planning Commission Meeting
9/10	Planning Commission Meeting
9/17	Long Range/General Plan Meeting for Planning Commission
9/24	Planning Commission Meeting
10/8	Planning Commission Meeting
10/15	Long Range/General Plan Meeting for Planning Commission
10/22	Planning Commission Meeting
11/12	Planning Commission Meeting
11/19	Long Range/General Plan Meeting for Planning Commission
12/10	Planning Commission Meeting
12/17	Long Range/General Plan Meeting for Planning Commission